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Bargaining Unit Determination in Alberta - Recent Experience

by

©

Albert Edward Kennedy

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH

IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE

OF MASTER OF BUSINESS ADMINISTRATION

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THE UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES AND RESEARCH

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Date April 9/78

TO

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ABSTRACT

This work examines and comments upon the activity of the Alberta Board of Industrial Relations in one of its major roles, that of the decision making entity in the process of official bargaining unit determination. This study concentrates upon the decisions of the Alberta Board during the ten year period from January, 1966 to December, 1976, and where possible compares the decisions made in Alberta to the decisions made by similar bodies in two other major labour jurisdictions in Canada, Ontario and British Columbia.

The opening chapters contain a discussion of the positions and interests of the various parties involved in this particular decision making process, as well as an analysis of the details of the three major problems currently complicating the role of labour relations boards in this particular area of activity. The three problems discussed are the status of professional personnel, the status of craft units, and the difficulties associated with assessing the proper position of managerial personnel.

Succeeding chapters examine the specific decisions of the Alberta Board of Industrial Relations with respect to the four industries that dominated much of the time spent on unit determination matters, namely the health care industry, the construction industry, the retail industry and the municipal government and school board portion of the public sector. A similar approach is followed in each

chapter. The chapter opens with a discussion of those aspects of the industry under scrutiny likely to have some influence upon the unit determination decision. This background material is then followed by a detailed examination of the actual decisions made by the Alberta Board, as well as relevant and informative decisions made in the other jurisdictions considered in this study. In each section, when available evidence is supportive, discernable patterns are pointed out and commented upon, as are noteworthy differences in the approaches taken in each jurisdiction.

The study concludes with remarks in regard to the performance of the Alberta Board in relation to the practical and theoretical benchmarks discussed in the opening chapters.

I wish to acknowledge and thank the members of my committee for their guidance and suggestions, in particular Professor C. Brian Williams for his invaluable assistance throughout the life of this project. I should also like to recognize the original contributions, in terms of providing time, funds, and ideas, of Mr. Don Kehoe and Mr. Gary Gough of the Alberta Department of Labour.

TABLE OF CONTENTS

Page

LIST OF TABLES xiii

LIST OF ABBREVIATIONS xiv

Chapter

1. INTRODUCTION 1

  THE GENERAL TERMS OF REFERENCE 1

    Purpose and Scope of this Study 1

    Data Base of this Study 3

  CONCEPTS, PRINCIPLES AND PARTICIPANTS 3

    The Concept and Importance of the Certified Bargaining Unit 3

    The Position of the Labour Relations Board 10

    The Powers, Principles and Policies of the Labour Relations Board 12

    The Concept of Community of Interest 24

    The Interests of Labour and Management 29

2. THREE MAJOR PROBLEMS 46

  THE CRAFT UNIT QUESTION 46

  THE MANAGERIAL QUESTION 59

  THE STATUS OF PROFESSIONAL PERSONNEL 84

3. THE HEALTH CARE INDUSTRY 115

  THE NATURE OF THE INDUSTRY AND THE WORK FORCE 115

  THE FIVE UNIT STRUCTURE 121

    The Overall Position of the Alberta Board 121

Page

Auxiliary Nursing Care. 123

  The Initial Policy. 123

  The Revised Approach. 125

  The Final Attempt 127

Paramedical Personnel 132

  The Difficult Position of the Group 132

  The Initial Policy. 135

  The Divided Unit Concept. 136

Support Personnel 145

  A More Stable Situation 145

  Housekeeping Activity 147

Direct Patient Care 148

  A Well Established Group. 148

  Some Nomenclature Problems. 150

  Students and Teachers 152

The Status of Office Staff and Supervisors. 156

  Department Heads and Professionals. 156

  Health Care Office Staff. 162

The Problem of Geographical Scope 167

CONCLUSION 171

Page

4. THE CONSTRUCTION INDUSTRY 194

THE INDUSTRY AND ITS MOST RECENT PROBLEMS. 195

Bargaining Structure - The Major Determinants. 195

Challenges to the Existing System. 201

RECENT ALBERTA EXPERIENCE. 205

The Legislative Context. 205

Technology Influenced Decisions 207

The Shop Unit - Field Unit Controversy 207

Work Jurisdiction Problems 222

"New" Trades 228

More Common Problems 234

Supervisors and Foremen 234

Security Personnel 236

EMPLOYER ASSOCIATIONS 238

Multi-employer Bargaining 238

The General Debate 238

The Construction Industry Adaptation - Accreditation. 241

The Activity of the Alberta Board 248

5. THE RETAIL INDUSTRY 281

THE CHAIN OPERATION 286

Page

The Multi-location Question 286

Managerial Exclusions - Department Heads 290

WHOLESALE OUTLETS 294

The Multi-location Question 294

Unit Type 296

PARTS AND EQUIPMENT RETAILERS 297

Unit Type 298

The Multi-location Question - Unit Area 299

HOTELS 300

6. MUNICIPAL GOVERNMENTS AND SCHOOL BOARDS 314

THE NATURE OF THE SECTOR 314

CITIES, TOWNS AND MUNICIPALITIES 315

The Managerial Question 315

The Appropriate Bargaining Structure 319

BOARDS OF EDUCATION 322

The Appropriate Bargaining Structure 322

The Managerial Problem 325

7. CONCLUSION 334

SUMMARY 334

The Health Care Industry 334

The Construction Industry 335

Page

The Retail Industry 336

Municipal Governments and School Boards 338

FINAL OBSERVATIONS 338

The Alberta Board Compared 338

The Three Major Problems 341

In Relation to 1966 343

The Basic Principle 345

FURTHER STUDY 345

BIBLIOGRAPHY 347

LIST OF TABLES

Table	Description	Page
I	Cases	354

BARGAINING AGENT NAME ABBREVIATIONS

NAME	ABBREVIATION
Alberta Association of Registered Nurses	AARN
Alberta Brotherhood of Dairy Employees and Driver Salesmen	Driver Salesmen
Alberta Certified Nursing Aide Association	CNA's
Alberta Construction Labour Relations Association	ACLRA
Amalgamated Meat Cutters and Butcher Workmen	Butchers
Amalgamated Transit Union	Amalgamated Transit
Bakery and Confectionary Workers International Union of America	Bakery Workers
Bricklayers, Masons, Marble Masons, Tile Setters, Terrazzo Workers and Apprentices International Union of America	Bricklayers
Building Service Employees International Union	Building Service
Butcher Workmen of North America	Butcher Workmen
Canadian Brotherhood of Railway, Transport and General Workers	Railway Workers
Canadian Food and Allied Workers	Food and Allied Workers
Christian Labour Association of Canada	Christian Labour
Canadian Union of Public Employees	CUPE
Driver Salesmen, Plant, Warehouse and Cannery Employees	Driver Salesmen
Health Sciences Association of Alberta	Health Sciences

NAME	ABBREVIATION
Hotel and Restaurant Employees and Bartenders International Union	Bartenders
International Association of Bridge, Structural and Ornamental Iron Workers	Iron Workers
International Association of Machinists and Aerospace Workers	Machinists
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers	Boilermakers
International Brotherhood of Electrical Workers	Electrical Workers
International Brotherhood of Painters and Allied Trades	Painters
International Brotherhood of Teamsters, Chauffeurs, Warehousmen and Helpers of America	Teamsters
International Chemical Workers Union	Chemical Workers
International Union of Operating Engineers	Operating Engineers
International Union of United Brewery, Flour, Soft Drink and Distillery Workers of America	Brewery Workers
International Woodworkers of America	Woodworkers
Office and Professional Employees International Union	Office Workers
Oil, Chemical and Atomic Workers International Union	Oil, Chem and Atomic Wkrs.
Operative Plasterers and Cement Masons International Association of the U.S. and Canada	Plasterers
Retail Clerks International Association	Retail Clerks
Retail, Wholesale and Department Store Union	Retail, Wholesale Union
Sheet Metal Workers International Association	Sheet Metal Workers

NAME	ABBREVIATION
The Building, Construction and General Labourers or the Construction and General Workers Union	Labourers
United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada	Plumbers and Pipefitters
United Brotherhood of Carpenters and Joiners of America	Carpenters
United Cement, Lime and Gypsum Workers International Union	Cement Workers
United Mineworkers of America	Mineworkers
United Steelworkers of America	Steelworkers
Wood, Wire and Metal Lathers International Union	Wood, Wire and Metal

SOURCE DOCUMENT ABBREVIATIONS

Alberta Board of Industrial Relations	ABIR
British Columbia Department of Labour Summary of Activities	BCDOLSOA
Canada Labour Relations Board Reports	CLRBR
Canadian Labour Law Reporter - Commerce Clearing House	CLLR
Labour Relations File - Alberta	LR
Ontario Labour Relations Board Monthly Report	OLRBMR
Ontario Labour Relations Board Reports	OLRBR

"It must by now be evident that to cite representation cases is like citing the Bible: you can find some authority for just about anything." (R.M. Hall, 1967.)

INTRODUCTION

GENERAL TERMS OF REFERENCE

Purpose and Scope of This Study

In the summer of 1966 the Canada Department of Labour published a book entitled Determination of the Appropriate Bargaining Unit. The book was written by Edward E. Herman of the University of Cincinnati. It dealt with the question of bargaining unit determination in a Canadian context, with reference made to the policies and practises of labour relations boards in Canada, either provincial or federal, and the problems encountered in developing and implementing such policies. The book examined, in essence, the overall positions of the eleven active labour boards in Canada, ten provincial and one federal.

The various positions taken by the Alberta Board of Industrial Relations, up to 1966, were included in Mr. Herman's book, but there has been no systematic examination of the activity of the Alberta Board since the publication of that work. The absence of such a work is the underlying reason and basis for this undertaking.

The purpose of this study is to examine the activity, in the field of bargaining unit determination, of the Alberta Board of Industrial Relations during the roughly ten year period from the publication of Mr. Herman's work in 1966 to the point at which this study was begun, 1976. Unlike Mr. Herman's work, this undertaking will not encompass the whole of Canada, but instead will concentrate only on the experience of the Alberta Board, with reference made, where applicable and possible, to the activity of only two other Canadian labour boards, those of Ontario and British Columbia. Where general issues are discussed, as in the first two chapters, occasional reference will be made to the experience of the Canada Labour Relations Board and the National Labour Relations Board in the United States. The comments and experience of these two bodies are of extreme interest in any discussion of the general problems related to unit determination.

Condemnation or glorification of the activities of the Alberta Board is not the intent of this work, nor is there any attempt to mold the collected data, in light of Mr. Hall's comment, into a shape more compatable with any individual's preconceived notions regarding what should or could have happened in the Alberta jurisdiction. Instead, an attempt was made to objectively discover and comment upon, wherever possible, the trends, tendencies and definite policies discernable from the cases examined. Available cases of interest and relevancy from the other two jurisdictions within the scope of this study are used to create a context within which the activity of the Alberta Board may be placed, and to which it may be compared.

This work is structured so that it proceeds from the general, to the very specific, and back to the general again. This introduction continues with an examination of the basic concepts involved in the question of bargaining unit determination, and the positions and interests of those who are party to such decisions. Chapter two contains a discussion of some major unit determination problems that currently plague labour relations boards, namely the craft question, and the status of managerial and professional personnel. Chapters three to six examine in detail the activity of the Alberta Board in the four areas that dominated the Board's time: health care, construction, retail trade, and the municipal and school-oriented portions of the public sector. The final chapter contains general observations regarding the issues discussed and the data examined, as well as speculation regarding areas of possible interest for further study that have been unearthed in the work related to this undertaking.

Data Base of this Study

All information regarding Alberta cases cited in Chapters three to six was obtained from written documentation found in the available labour relations files of the Alberta Board of Industrial Relations. All information regarding the activities of the Ontario and British Columbia Boards was obtained from the various official publications of those two entities, and the few other publications that normally contain such information. The cases referred to in this study are drawn from the period January 1, 1966 to December 31, 1976. Although there are no doubt many cases of interest beyond the boundaries of this time period they are not, in general, mentioned herein; the intended time frame of the work, with few exceptions, is respected throughout. The writer has assumed throughout that the written statements of all three boards do indeed reflect actual events and policy commitments.

CONCEPTS, PRINCIPLES AND PARTICIPANTS

The Concept and Importance of the Certified Bargaining Unit

The bargaining unit as a concept may be approached in two ways, either as a subject for consideration when speaking of organization activity, or as a consideration when speaking of subsequent bargaining.[1] The two approaches are parts of one process, the former being necessary in order for the latter to occur.

Since organization recognition was initially the primary problem facing the labour movement in Canada, organizational requirements were the primary considerations behind the introduction of the government-created bargaining unit (as opposed to a party-created unit). The concept of a union exclusively representing a clearly-defined group of employees was introduced to solve specific problems, as indicated by H.D. Woods:

> The use of the bargaining-unit device, coupled with the certifying of a union as bargaining agent with exclusive rights to represent the unit for a statutory period of time, has solved a number of problems. Notably, it has resolved the problem of conflict over recognition between a union and an employer; it has also provided an orderly means of deciding with which of several contesting unions an employer shall deal.[2]

The certified bargaining unit was thus the creature of a public policy decision. At varying points in time both the federal and provincial governments perceived the proliferation of disputes as a threat to the public welfare, and much like their counterpart in the United States, decided that the bargaining unit was a proper administrative device for dealing with the problem. It was particularly attractive because of the way in which it fit into the context of the democratic process. It allowed people the freedom to organize and associate, and presented them with a chance to express themselves through their vote, but it also allowed the interests of the public and the employer to be heard. By vesting unit determination authority in an appointed board, and by allowing or requiring both parties to appear before that board, the government assured itself of some degree of control over the organizing function and assured the employer that he would have an opportunity to be heard without having to face any economic sanctions.

The concept of a bargaining unit may also be viewed in light of bargaining activity, in particular as a part of bargaining structure, which has no small effect on the actual conduct of collective bargaining. The bargaining unit may be viewed as not merely a device to control and facilitate organization, but also as the decision-making unit in the bargaining structure. A rather enthusiastic Arnold Weber compared the bargaining unit to the state in political theory:

> Its occupant enjoys the rights of sovereignty over the defined area. These rights include the power to make laws, collect revenues, and exercise disciplinary sanctions. These are valuable prerequisites for organizations seeking survival and expansion.[3]

When approaching the bargaining unit as a part of bargaining structure most authors are quick to point out that it is really only the "official" unit and that over time the "occupant" and a corresponding employer (or employers) may develop informal or supplementary structures that may more accurately reflect their real bargaining needs.[4] The concept of "bargaining unit" that will be used in this study will definitely be that of the "official" unit. It is this unit that is of concern to labour relations boards, it is this unit that they can control, and thus it is this unit that is of interest here.

The bargaining unit, whether viewed in light of its role in the organizing process, or in light of its contribution to bargaining structure, is certainly worthy of our attention. At the point of initial organization the unit is of vital interest to all parties, among them the employees involved. When the boundaries of the unit are delineated by a labour board, the economic future of individuals is involved. To be excluded from the unit may mean a temporary (or even permanent, depending on the reason for exclusion) denial of the protection and economic power afforded by union membership. Even if one is included in the unit, the size and type of unit involved will determine the weight carried by any individual vote, and thus an individual's likelihood of influencing any decisions. In terms of simple democratic rights, the unit is of vital importance. Some people will be denied a right to vote on a matter they may feel will affect them and their employment, they may be denied access to collective bargaining, or they may find themselves being represented by an organization they do not wholly support.

In an "organization stage" perspective the unit is important because its determination will have a tremendous influence on whether collective bargaining of any type is undertaken. In closely contested organization campaigns the inclusion or exclusion of people favourable or hostile to the union or unions involved may spell the difference between certification and rejection. The type of unit favoured by a labour board may determine whether an organizing campaign is even undertaken in a particular industry,[5] and, furthermore, the type of unit described by the Board may make it impossible for the union to engage in organizing activities because of the membership specifications in its own constitution. (Although H.D. Woods pointed out in Labour Policy and Labour Economics in Canada that most unions are not above altering the membership provisions of their constitution if the potential number of new members warrants it.)

The unit becomes even more important when we consider its influence on the bargaining process itself. The type of unit created will have a profound effect on the actual success of bargaining undertaken in the new relationship, as John Abodeely pointed out:

> The chosen unit configuration has an immediate effect upon the scope of collective bargaining. An inappropriate grouping of employees may lead to an inefficient allocation of resources and to a disruption--if not destruction--of the collective bargaining process.

The priorities in a bargaining relationship will vary as much as the backgrounds, employment situations, and demographic characteristics of those who have an interest in the proceedings, and a poorly conceived unit can make the task of sorting out those priorities, and the bargaining over them, so frustrating that the relationship breaks down entirely.

Once the unit is established and certified the employer must recognize the unit and the union by bargaining in good faith with the intent of concluding a collective agreement. To do otherwise exposes the employer to whatever sanctions are provided for under the relevant labour legislation. The employer has no choice. Whether he agrees with the unit configuration or not, he must deal with the properly elected representatives of that group of employees and he must make whatever accommodations are necessary in his own operations in order to, if not reach an agreement, at least convince the labour board and/or the courts that his bargaining attempts are sincere. This knowledge that he will have to deal with those in the unit, regardless of its shape and size, makes that shape and size very important to the employer.

Weber's previously cited view of the bargaining unit as a miniature state also points out another factor contributing to the importance of the bargaining unit: the principle of exclusiveness. After certification there can be only one collective bargaining representative for the unit. Although there are provisions for "open periods" during which other unions may attempt to gain a foothold in an existing unit, in each of the jurisdictions considered in this study the incumbent union is generally conceded to have the advantage unless it has committed some very serious representational oversight. When granting a union's unit request, a Board of Industrial Relations is granting that union a rather powerful position, and also a great responsibility.[7] Like any elected representative, the union must serve not only those who voted for it, but also those who voted against it and, when the shop is open, even those who are not members of the union. The unit created must not do anything to hinder union attempts to fulfill this obligation for, given the principle of exclusiveness, there will be, at least for a while, no-one else to do the job. Put another way, the Board must not give the union the sole responsibility for properly representing a group of employees while at the same time making it as difficult as possible to do so.

The unit is also important from the standpoint of the power relationship of the parties involved. The unit must not place an imbalance of power in the hands of either party. The unit must not place the union in a weak or unstable situation, nor must it force the employer into a corner by asking him to deal with unusually large or numerous units of employees, the latter often producing the "whipsaw" technique. Those involved in the creation of a bargaining unit must soberly consider what effects their decision may have on the long-run power balance between the parties involved, a difficult "crystal ball" kind of activity at the best of times.

The role of the bargaining unit in the Canadian machinery of dispute settlement makes its determination particularly important in Canada. Since conciliation services are confined to a "bargaining unit" in the jurisdictions considered here it is essential that the unit configuration not impede the quick and orderly settlement of disputes, if at all possible.[8] The unit should not conflict with the realities of the situation and thus make what is already a difficult situation (and hence the need for conciliation) even worse. Unnatural or illogical bargaining units can only result in the duplication of services, with accompanying delays and inevitable increases in the level of frustration. The administrative nightmare may provide an obstacle to the intended purpose of the dispute-settling machinery, a danger commented upon by H.D. Woods:

> It is true that voluntary bargaining units that cross provincial boundaries may be established to engulf smaller certified units in each province. But, if bargaining difficulties emerge and conciliation becomes necessary, the parties are required to ignore the realities of these mutually-determined bargaining units and revert to the artificial imposition of the law. In a large national complex like the meat-packing business, the parties may be required to conform to seven or eight conflicting patterns of conciliation requirements running over a period of months. A policy that does violence to the administratively sound bargaining unit is not itself sound.[9]

In the Canadian context, then, the Board must not only consider the unit and its influence on a normal bargaining relationship, but in fairness to the parties, must also consider the unit and its role during the critical period of dispute settlement. We may view the bargaining unit, then, as an administratively sound tool for the control of organizing activities in the field of industrial relations, as well as an integral part of the overall structure of collective bargaining. The concept is worthy of our attention because of its potential for influencing the likelihood and extent of union organizing activity, and its influence on the probability of success of the newly-certified bargaining relationship.

The Position of the Labour Relations Board

Ever since the Industrial Disputes Investigation Act of 1907 was severely limited in its application by the Toronto Electric Commissioners v. Snider decision of 1925, the major portion of industrial relations activity in Canada has been handled through administrative machinery controlled by the various provinces, except under the emergency conditions engendered by a state of war. The provincial labour relations boards are creations of the post-World War II era, (Ontario formed a Labour Court in 1943 which handled much of the administrative and adjudicatory functions that the modern boards now handle) and they are, in general, modeled after the War Labour Board whose power they usurped, and their status is similar in each province. A.W.R. Carrothers delineated the position of labour boards as follows:

> The Board is a creature of statute, owing its existence, functions and powers to an Act of the legislature . . . It is an 'administrative' tribunal in the sense that the legislature has delegated to it power to determine matters of policy relating both to the substantive and to the procedural operation of the Act, to promulgate rules which it may amend, to police the statute in certain areas through its staff, and to sit in judgement on the rights, duties, and powers of parties coming within the scope of the legislation.[10]

The Boards whose decisions will be considered here are completely responsible for the "whole process of securing the bargaining relationship through the device of certification of a union as the exclusive representative of a designated group of employees"[11] in activities not covered by federal labour legislation, or excluded by their own legislation, and within the boundaries of the relevant province.[12]

In their positions as administrative tribunals, these Boards exercise two major functions, one related to representation rights issues, the other concerning the control of unfair labour practises, with the former taking up the greater amount of Board time.[13] The former involves matters related to the granting and terminating of bargaining rights, the transfer of bargaining rights and the status of employees after a change in employer due to amalgamation, sale, or dissolution of a business or undertaking, and, in particular, the determination of the proper unit as part of the initial granting of bargaining rights.

The position of the Boards regarding bargaining unit matters is peculiar in that it is almost totally reactive. The Board may only ruminate over matters that one or both parties bring before it, and as later evidence will indicate, it is unusual for a Board to modify to any great extent the units brought before it, the Boards not wishing to create bargaining units, but rather choosing only to adjudicate on those that the two parties to the proceedings have themselves created. The Boards generally seek to remain "above" the debate, a position well-delineated recently by R.A. Furness of the Ontario Board:

> In our view, under the Labour Relations Act no trade union possesses a monopoly with respect to representing any bargaining unit of employees. In our opinion the root cause of the arguments over the appropriateness of the bargaining unit is grounded in a view that trade unions in the construction industry should not as a matter of principle cross craft lines in their organizing activities. Many arguments may be made in support of this point of view. Such a point of view, however, is best debated within the ranks of trade unions, rather than before the Board.[14]

The position of the Alberta Board would appear to be similar:

> Although the Board has the authority to alter or amend the description of the unit of employees, the Board does not consider

> this authority extends to rewriting the description of a bargaining unit as would be necessary with the instant application.[15]

The overall position of the Boards in bargaining unit matters is a very powerful one. They have the final word in unit considerations,[16] and have thus shifted the focus of the power struggle over the recognition issue. Both parties must conduct themselves according to a third party's set of rules, the union seeking to organize the statutorily required percentage of the proposed unit in order to meet the requirements of the Board, and the employer (if he is rational) being careful to avoid the problems of an unfair labour practise charge. The parties are not totally concerned with each other, but instead must keep at least one eye on a third party. The organizing phase is no longer the pure power struggle that it once was; the labour relations board now has the vast bulk of the available power.[17]

The Powers, Principles and Policies of the Labour Relations Board

The principles and policies used by labour relations boards in bargaining unit decisions are extremely important because of the discretionary power these bodies have in this particular area. Actual restrictions on their day-to-day unit decisions are minimal, and the policy guidelines given in their governing legislation are vague and idealistic, if given at all.[18] Except for a few clauses dealing with specific situations that have caught the attention of the legislature, the labour boards have been left pretty much on their own to wrestle with the problems of unit determination, and thus to formulate policies to guide their struggle.[19]

The Alberta Board is specifically empowered to decide whether a person is an employee, whether a person is an employer, whether an organization of employees is a trade union, whether that trade union is a proper bargaining agent, whether a group of employees is a proper unit for collective bargaining, and whether any particular person is included or excluded from a bargaining unit.[20] The Board may also decide whether a person is a member in good standing of a trade union, or whether he has applied for same.[21] In order to properly make these decisions, the Board has the power to examine the relevant documents, make any other inquiry that it may consider necessary, and hold any hearings that it deems necessary.[22] There is also specific provision for the Board to conduct a vote, and it has the power to make all the necessary rules pertaining to the taking of that vote, including who is eligible to cast ballots.[23] All these powers are the exclusive jurisdiction of the Board, and it may at any time reconsider and vary any decision made in the exercise of them.[24] No decision made by the Board may be reviewed by any court,[25] except by an application for certiorari or mandamus filed within thirty days of the date of the decision in question.[26]

The aforementioned power to decide whether the unit is appropriate is not greatly restricted. The definition of a unit allows for any group of employees of an employer,[27] the Board only being required to inquire into whether the unit is appropriate.[28] After the inquiry, the Board may still make any appropriate inclusions or exclusions,[29] alter the unit description to a form it considers appropriate,[30] or do whatever else seems appropriate under the circumstances.[31] The Board certification power is contingent upon its being satisfied that the majority of those involved do, in fact, wish to be represented by the applicant union. The Board may satisfy itself either through the use of documentary membership evidence, or by holding a vote in cases where other evidence is not deemed conclusive.[32]

The actual coverage of the Act provides some further restrictions on the unit determination function. Persons who execise managerial functions or deal in confidential industrial relations matters are, along with medical doctors, dentists, architects, engineers, and lawyers, specifically excluded from the definition of employee contemplated by the Act.[33] The Board has authority to deal only with employees as defined in the Act, and thus cannot include other workers in any bargaining units. The Board also may not consider matters involving the Crown in Right of Alberta and its employees, employers, and employees as defined in The Crown Agencies Employee Relations Act, those involved in domestic work in private dwellings, farm employers and workers, and municipal policemen, as these groups have also been specifically excluded from the coverage of the Act.[34]

The Ontario Board has similarly exclusive authority in bargaining unit matters,[35] even to the extent of being able to create an interim unit where the squabble over the unit composition will not affect the applicant's right to certification.[36] The unit must consist of more than one employee, and the Board may conduct a vote to determine the wishes of the employees regarding the appropriateness of the unit.[37] The question of who is to be considered an employee is dealt with in greater depth in Ontario making necessary the provision for having a vote on the appropriateness of the unit. Architects, dentists, lawyers, medical doctors, and land surveyors, along with those involved in confidential labour relations matters or other managerial functions are specifically excluded from being employees for the purposes of the Act,[38] but dependent contractors and professional engineers are to be considered as employees under the Act.[39] The Board may consider a unit consisting solely of one of these groups appropriate, and can include them in a unit with other employees only if they wish to be included.[40]

The Ontario Board must also consider craft units appropriate if the circumstances warrant it,[41] and in unit matters the Board's discretion in the use of the vote is more limited than that of the Alberta Board. A representation vote must be resorted to when the membership evidence indicates that somewhere between forty-five and fifty-five percent of those involved wish union representation.[42] The definition of a bargaining unit in Ontario is also more restricted, specifically mentioning some types that may be used.[43] The Ontario Act is also more extensive in its exclusions. In addition to those employed in domestic and agricultural work, the Act also excludes those involved in hunting, trapping and horticulture, along with Policemen, Firemen, and school teachers.[44]

The Ontario Act, though granting similar powers to the Ontario Board, is more specific regarding the use of those powers in unit determination matters than is that of Alberta. In addition to the enumerated instructions, the Act contains a particular section devoted to the construction industry. The section has definitions and instructions that govern the Board's unit determination activities in that atypical industry, and it will be more closely examined in the construction portion of this study.

The British Columbia Board has the powers granted to the other

Boards in bargaining unit matters and, included in the realm of activity, is specific provision for the Board to decide whether a person belongs to a craft or profession;[45] whether a person is engaged in police, fire-fighting or hospital duties;[46] whether a person is a professional;[47] or whether a person is exercising technical or professional skills.[48] Decisions by this Board are also final,[49] with no provision for review by any court except in cases where a wrongful act "in respect of which a proceeding is commenced causes an immediate danger of serious injury to any individual or causes an actual obstruction or physical damage to property".[50] The British Columbia Board is specifically directed to give consideration to craft[51] and multi-employer units.[52] The Board can order a vote in any unit application matter,[53] and if support is between thirty-five and fifty percent it must do so[54] unless the Board believes that the vote would not reveal the real feelings of the employees.[55] In the latter case, the Board has the option of granting or refusing certification without the use of a representation vote. The Board may also direct a vote at the request of the applicant trade union.[56]

Like the Ontario Board, the British Columbia Board may consider dependent contractors as employees under the Act, but there is no specific provision for their being put in separate bargaining units.[57] Unique in the scope of this study is the provision in the British Columbia Labour Code for the inclusion of supervisory employees either in a unit of their own or in a unit of all or some of the employees they supervise.[58] (This provision will receive further attention.) Also of interest in the British Columbia Act is its allowance for the Board to consider the creation of councils of trade unions.[59] Here, too, the Board has extensive powers, even to the extent of being able to ignore existing collective agreements if it feels that a council of trade unions would be a more appropriate bargaining agent for a unit.

The British Columbia legislation has a rather lengthy definition of the term "unit", it being more specific than that of Alberta or Ontario regarding the types that may be considered,[60] but the definition of employee gives the Board more discretion in that it specifically includes those engaged in police duties, while not excluding any of the usual professions or domestic, agricultural, hunting or trapping personnel. Only those exercising managerial functions, those employed in a confidential capacity in matters related to industrial relations, and school teachers are excluded from the definition.[61]

Though the provisions are not identical in the three Acts, the underlying themes are very similar. There are few obstructions placed before the Boards other than those one would expect to see in a democratic, capitalistic society (the common element of the representative vote and the rule of the majority, for example, or the consistent protection of management's rights by allowing them to have their "own people" around them through the managerial exclusions). The Boards generally are free to collect the data and make the decisions on the matter of bargaining units, but they are then also required to confront the issues and formulate the policies needed to make the decisions. Though the Acts may spell out specific alternatives for the Boards, the predominant theme is that the Board "may" take such an action; the decision as to whether it "will" or not is left with the

Board. The jurisdiction may be more clearly defined, but the tough decisions still lie well within it.[62]

Because of the fairly free hand they have been given, labour relations boards have had to develop at least a few consistent overall policies in order to provide some measure of rationality and predictability to their unit determination decisions.[63] The policies as set out here have not varied to any appreciable extent during the ten years in question, at least not in the way they have been elucidated, but the weight given them has varied depending on the nature of the decision.[64]

The dominant policy problem grappled with by labour relations boards has stemmed from the conflict inherent in the pursuit of the goals of industrial peace and stability, while at the same time seeking to preserve individual rights. The conflict is rooted in a more fundamental conflict that stems from the nature of industrialism itself, a nature clearly understood by H.D. Woods:

> Industrialism, because of its interdependence, requires a high level of predictability, even though industrial growth requires the encouragement of uncertainty. This dilemma of predictability and uncertainty is a critical issue of industrial relations.[65]

This conflict is manifested in unit determination questions in the form of disputes over the size of the appropriate unit. Larger units produce the kind of stability sought through the mechanism of collective bargaining (the spread of which indicates that, at least in the labour market, the above dilemma is partly solved in favour of predictability), but they usually do little to further the goals of individual rights through freedom of choice. R.M. Hall pointed out the practical ramifications of the problem as follows:

> Yet as a practical matter, it is impossible to give every

> employee what he wants, and also maintain stable and effective collective bargaining relationships. To allow every employee in a given group to have his own union or to be unrepresented, as he chooses, might maximize short-run freedom of choice, but it would also maximize long-run chaos.[66]

The conflict may then be narrowed down even further. The individual himself is faced with a long-run/short-run dilemma in pursuing his goals of "job, income and psychic security",[67] which may certainly be best served in the absence of the aforementioned chaos, while at the same time seeking to avoid losing control of the situation by burying himself in a large bargaining unit.

Labour relations boards have the advantage over the individual in considering this situation. The individual, facing short-run income and security problems, often feels that he could best solve these problems by keeping control of the situation himself, particularly if he feels he has special needs and desires, and even more so if, by some special skill or circumstance, it appears he will be able to exercise the control he seeks. In the short run this approach seems the logical response, but in the long run, which labour boards must consider, this approach leads to disaster. Though the consequences are often disappointment and disillusionment for the individuals involved, the Boards must support long-run stability, and trade off individual rights, a policy position clearly at the root of the following comments by M.R. Rierson, former Minister of Labour for the province of Alberta:

> It was evident to the Board that collective bargaining based on a multiplicity of units in this industrial plant does not lead to the best labour-management relations and as well is not in the best interest of the employees themselves. The Board is of the opinion that the fragmentation of the group of maintenance employees in collective bargaining is neither logical nor does it result in units of employees which are appropriate for collective bargaining.
>
> Although the Board can and does recognize and appreciate the wish of groups of employees in an industrial plant to retain their

> separate identity in collective bargaining, the Board must seek to create an environment that will provide stability in bargaining relations, and in the opinion of the Board in the present situation, effective collective bargaining will best be facilitated by one overall plant unit.[68]

This principle of stability at the cost of individual free choice is also exemplified in the enactment of the exclusive representation legislation already discussed. This effectively denies bargaining unit members the right to discard their representatives except at prescribed points in time. This allowance for dissent at certain points would seem to be a successful compromise between the conflicting goals,[69] but again it is the labour boards who must control the activities of the combatants during this "open season" and here, too, the principle of stability is applied, for attempts are often made to gain representation rights for units different from those extant. In this situation we find the boards applying the stability doctrine under the guise of what might be called the "do not disturb" principle.

Even if a union seeking to displace an existing bargaining agent, either for the same or a similar unit or a fragment thereof, has successfully negotiated the obstacle course of statutorial and procedural requirements,[70] the onus is still upon the applicant to prove to the board that a change in unit structure or bargaining agent is called for. The applicant must convince the board that the individuals in question have somehow been poorly represented by the incumbent union. Failure to do so usually ends the case at that point, as this policy statement by the Ontario Board indicates:

> The evidence established that the intervenor had not been neglectful of the interests of the group in any way. Therefore, where there has been a history of proper representation, the Board would not disturb the existing bargaining unit and permit the applicant to extract the classification it sought to represent.[71]

If it is established that the incumbent has not properly discharged its representation duties, it must still be proven that the proposed unit, if it differs from the existing one, is appropriate. Here, too, labour relations boards are not predisposed toward change. This recent statement by the Canada Labour Relations Board indicates the way in which proposed changes are viewed:

> Although as a general principle the Canada Labour Relations Board rejects the idea that the issuance of a bargaining unit certification to a union should in any way be interpreted by that union, under the terms of the code, as possessing it with "property rights" in the continued existance of this certification, the "balkanization" of an existing bargaining unit is a very serious matter, especially when the unit at issue is a single all-encompassing unit of all the employees of an employer, or of all the employees in a well-distinguished group, be it craft or otherwise.[72]

The principle of nondisturbance is also applied in matters relating to the form and structure of the employer's business. Employers quite naturally wish to retain the form of operation they have devised for their particular situation, and protest any proposed changes in that structure designed merely to make collective bargaining a little more convenient, at least for the union or unions involved.[73] Labour relations boards recognize the problem and in general appear to try very hard to minimize the disruptive effects of beginning a collective bargaining relationship. The Ontario Board has noted that it should "not cause the parties and the employees concerned to readjust their relationship in a very radical way in order to give effect to the Board's determination concerning the appropriate bargaining unit."[74] Among its basic operating principles the Canada Labour Relations Board has chosen to include a remark to the effect that in creating a bargaining unit it must not impair the operations of the employer, since doing so would not tend to produce "meaningful, peaceful, and harmonious bargaining."[75]

The stability principle pervades all of the unit decisions made by labour relations boards, but there are other principles at work as well. One of these is what is commonly called the "arm's length" principle. Legislatures in Canada have recognized what the Task Force called the "Role of Conflict in the System".[76] The paradox of solving conflict through the threat of conflict implies that there is, and should continue to be, a healthy gap between the parties involved. In maintaining this adversary relationship the parties will, in theory, better serve the interests of their respective constituents. Before granting a request for certification, boards usually inquire into the status of the trade union, with a particular eye for signs of employer influence or support. The applicant must also be conducting its affairs in accordance with its own constitution, which itself must not condone acts contrary to the principles supported by society in general. (Discrimination in a union constitution, for example, will not be tolerated.) The constitution should be approved by the membership, and should include a clause binding the organization to the pursuit of matters involving labour relations. There must have been no employer support or involvement whatever in the formation of subsequent operation of the trade union.[77] Board attitudes toward a too-cosy relationship between union and employer are felt in the unit determination question also. Boards generally follow the principle that they will not approve of a bargaining unit just because the two parties involved like the proposed structure.[78]

Board policies regarding the agreement of the parties appear to have stiffened somewhat during the period of this study. In 1966

Edward Herman stated:

> . . . when the parties agree on the type and composition of a bargaining unit, the Boards will usually approve of such a unit, even if the unit is not completely in line with the Board's previous certification practises. (This assumes that the unit is within the Board's legislative powers.) Judge A. Gold of the Quebec Labour Relations Board has stated that such units are acceptable 'on the theory that if the parties feel that they are capable of negotiating a collective agreement for the unit in question, it is our duty to render the necessary assistance to achieve this purpose."[79]

However, as shall be disclosed in the Hospitals section of this study, the Alberta Board at times pursued its policies rather resolutely, even in the face of existing agreements between employers and employees regarding the appropriateness of certain types of bargaining units. In two recent cases the Ontario Board also seemed to stiffen its approach by stating that it did not have to condone "those forms it deems detrimental to the goals of long-run industrial peace in Ontario,"[80] and also that agreement among the parties did not make a unit instantly appropriate.[81] Whether because of increased adherence to the "arm's length" rule, or because of more clearly defined and resolutely pursued Board policies, the importance of agreement between the parties may have slipped a little, at least in particularly troublesome industries.

Labour relations boards also try to be consistent,[82] while at the same time trying to acknowledge the uniqueness of each case by examining it on its own merits.[83] Pursuing these dual policies often causes considerable strain. Consistency implies that a board will apply a standard set of criteria in similar cases (for example, one would expect similar questions to be raised at hearings involving managerial exclusions), but to recognize the uniqueness of the case at hand the Board may have to assign differing weights to the applied tests.[84] Over time, some of the criteria may even become useless and be dropped from consideration altogether. The strain caused by the consistency/ uniqueness dichotomy does not appear to be as constant as that caused by the individual freedom/stability problem, largely because, despite what many idealists may choose to believe, there is a similarity between cases. Boards may occasionally have to re-examine their criteria and policies when considering what may be termed "fundamental" cases in particular industries, but these cases then become a form of precedent in the industry; they provide a consistent standard, a standard that was developed out of the recognition of a new, but not totally unique, situation.[85]

There are several policies or goals at work, then, in the actions of a labour relations board. The boards seek credibility by being consistent and they seek to recognize the flexibility and change that are part of the environment they operate in by at least trying to look at cases on their individual merits. They strive to ensure that employee organizations are what they say they are, and they acknowledge the importance of the agreement of the parties, while refraining from giving it determining importance. But, above all else, they seek to promote stability. The very origins of the certification process dictate that this must be their overall goal; the process was created to stabilize a situation and the boards must ensure that it continues to do just that.

The Concept of Community of Interest

A Board policy that was deliberately left out of the previous section is that of always considering the oft-referred-to, but poorly-defined concept of "community of interest" in making a unit determination decision. John Abodeely views the importance of the concept as follows:

> Of all the factors used in the determination of the appropriate bargaining unit, the community of interests factor is by far the most important, and yet the most difficult to comprehend. The Board has stated that 'first and foremost is the principle that mutuality of interest in wages, hours, and working conditions is the prime determinant of whether a given group of employees constitutes an appropriate unit.'[86]

The concept is difficult to comprehend largely because of the tendancy to view it too narrowly. Authors repeatedly note that besides community of interest, labour boards consider functional integration of production processes, interchange of employees between locations, geography and physical proximity of work locations, and common duties, skills and working conditions, without apparently realizing that the factors they have listed as separate considerations are those that determine "community of interest".[87]

The unit is created in order to bargain with the employer. That bargaining will be done over a certain number of issues. Whether a group of employees will have similar interests in the results of that bargaining is what must be determined when looking at community of interest. Whether a group has similar interests in other areas should not be material, because those other areas will not be the subjects of interest in their dealings with their employer. Whatever influences employee interest in likely-bargainable matters should thus be considered a valid criteria in determining community of interest. (Given industry characteristics and existing agreements, it is not difficult to predict what will be major bargaining issues. This done, it is also possible, then, to project whether a proposed group would have similar interests in these bargaining subjects.)[88] The following are the more common factors that boards feel influence the level of community of interest in any particular employee grouping. The peculiarities of the case will determine the overall weight attached to each criteria; in some cases particular criteria may have no bearing whatever, while in others one test may point to one type of unit while another substantiates a totally different conclusion. The boards must decide which is to be controlling.[90] (Of the several possible communities, which is the most appropriate for bargaining purposes?)

(a) Nature of the Work Performed--A group of employees may be distinguishable by virtue of the uniqueness of their function. This type of difference has much to do with the separation of office and production workers in most jurisdictions. Office workers doing fairly routine clerical work may not be any more skilled than those in the production process, but the nature of their work, which allows them to dress differently and come into contact with management more directly and more often, creates a different outlook toward collective bargaining. The higher proportion of female workers found in such work also produces a different outlook.

(b) Skills of Employees--Individuals may be a distinct group because they have unique skills, or are generally more skilled than others in the work force. This separate identity has built up over time in many occupations associated with the construction industry in particular, but is also appearing in other sectors. (Attempts to achieve recognition of group uniqueness because of skill levels or differences have appeared most persistently in the health care industry recently.)

(c) Conditions of Employment--Major differences in conditions of employment that affect interests in bargaining are usually related to differing methods of remuneration[91] and different levels of work freedom. People paid by the hour are likely to have different interests from people who are paid on a performance basis or some guaranteed monthly wage. Each group faces a different level of certainty in their income, and each faces a different time/income relationship. People under the constant scrutiny of one or more levels of management will likely have a different outlook from those who are given greater degrees of discretion and freedom. Over time such differing conditions are likely to produce differing outlooks toward the job, and different expectations related to it.

(d) Functional Coherence--Employees whose efforts are closely related or interdependent may have a community of interest despite other major differences because of the consequences of a shut-down of any part of the linked operations. Since all employees could be put out of work by the actions of any part of the group, all employees have an interest in all negotiations. If, on the other hand, functions among groups are such that one group could be used to replace another during a shut-down, the viability of separate groups is brought into question. The logical consequence of such interdependence or homogeneity is for the various groups to act as one for collective bargaining purposes. Unfortunately, to be realistic, the situation is usually somewhere between the two extremes, making the decision more difficult.

(e) Geography and Physical Proximity--The importance of actual work location is closely related to the importance of the labour market. Labour market conditions can vary considerably over large distances, particularly for undertakings that depend to a great extent on local manpower resources. In order to operate efficiently, companies may have to recognize these differences, and this can be done much more easily if the bargaining structure reflects local anomolies. The use of the word "community" also implies a level of active person-to-person communication that is needed to produce a group identity. If unit members never see each other, and "communicate" with each other only through union publications and convention delegates, then there must be some other force at work before the group could really be termed an identifiable and separable community.

(f) Administrative and Territorial Divisions--It has already been pointed out that labour relations boards are willing to recognize the significance of the employer's existing business structure. In the cases involving large companies especially, separate divisions and departments may provide the interest focus. Employees may identify with a particular division or product. Managerial responsibility and authority may be largely delegated to less than company-wide units. Authority to deal with collective bargaining matters and day-to-day conditions of employment may be decentralized in larger firms. If the company sees sufficient discrepancies between groups to create separate management units, it is not unreasonable to expect that there may also be unique collective bargaining interests as well.[92]

(g) Employee Interchange--The word "community" also implies a degree of permanence in the membership of the group. Except for the usual changes caused by hirings, firings, promotions and demotions, one would hope to be dealing with a similar group of individuals from one bargaining session to the next. The personal relationships that grow under such circumstances are no small factor in the orderly conduct of the bargaining process.[93]

(h) Bargaining History--A community of interest may already exist because of the experiences of previous bargaining in the same or similar undertakings. Through previous experience or comparison with other groups the group in question may already have a visible community of interest. Particularly in new situations being faced by a Board, it would seem prudent to look for evidence of what has happened in the past, if anything. If there are peculiarities in the industry, it may be unwise to base community of interest decisions on criteria that worked only in other industries.

It will be seen that some or all of these community of interest factors will be applied in one form or another to all the major decisions examined in this study.[94] Though community of interest occasionally gives way to other policy considerations, it is always, almost by instinct perhaps, considered by labour relations boards in unit determination questions.

The Interests of Labour and Management

Although the policies of labour relations boards in unit determination matters are of great concern, it must be remembered that it is only because of the conflicting interests of union and management that the various boards are involved in this question at all. It is to the interests of the other two parties that we now turn.[95]

The opposing views of union and management in bargaining unit decisions are centered upon three issues: the balance of power, the ease of negotiation and administration, and the effects of the decision on their respective internal structures.[96]

Union interests are usually revealed first because it is the union that takes the initiative in certification proceedings. It is the union that petitions the board for certification of a particular unit, and union interests are reflected in the proposed unit. The unit will encompass a group of people whose combined efforts, in the opinion of the union, will not be easily ignored or circumvented by the employer. The group will be sufficiently vital, as a whole, to the employer's organization to ensure that the employer must seriously consider the results of any withdrawal of services.[97] It would obviously be, then, in the union's interest to organize as large a proportion of a given work force as possible, but other concerns are also important; this union interest in power is limited by several factors. The union may only organize those allowed for in its own constitution. It will often only be interested in organizing units that fit into its existing structure and for whom it feels it can properly negotiate. The union must also reflect the interests of those it wishes to represent. Even though the union may have its doubts about a certain unit configuration, it may have to compromise in order to gain support. As we have seen, the union must also consider the likely reaction of the labour relations board to the proposed unit.

The balance of power relationship is also important to a union in its relations with other unions. This power consideration becomes particularly important in industries where unit determinations are an integral part of an ongoing jurisdictional conflict.[98] Unit proposals periodically, either intentionally or otherwise, involve some real or potential infringement upon the jurisdiction of another union. Since the union survives only by virtue of its members' jurisdiction over some type of work, any gains it can make in the size of the piece of the work "pie" that it controls represent an increase in its likelihood of survival. To have that work control embodied in a certified unit is the best possible situation. The proposed unit may then reflect a union's interest in either defending its own jurisdiction, or in infringing upon that of another union.

More cyncial observers occasionally mention that the competition among unions and their competition with employers manifests itself at the unit determination level through unit proposals that reflect, above all else, a configuration that the applicant perceives would allow it to win a representation election.[99] More idealistic concerns for overall bargaining structure and efficiency and the scope of the product market might be set aside because of the pressures of the short-run need to win representation votes.

The importance of these various union interests varies with the situation. Two unions locked in a struggle for control of a certain plant or industry may indeed give tremendous weight to their election position vis-a-vis the other union. A union comfortably placed in an industry or geographical sector may worry more about its own administration problems and internal structure than about competition from other unions or resistance from employers. A new union in a new sector may have to worry largely about selling its unit ideas to a status quo conscious labour relations board, but the common denominator in union interests is the quest for power. It is this power that will allow the union to fulfill its other objectives;[100] without it, the organizing activity is just an empty gesture.

Management could originally counter this union drive for power by simply refusing to acknowledge the existence of a union. However, under compulsory bargaining and certification this option is no longer open. Consequently, management seeks to ensure that the created unit of employees infringes as little as possible on the power base. This desire to maintain power is translated in unit matters into three basic desires, the desire to avoid any disruption or rearrangement of existing administrative machinery, the desire to maintain a strong and sufficiently large ununionized management team in the company, and often the desire to make it as difficult as legally possible for the union to organize. The latter is usually accomplished by proposing a unit that clearly militates against union organizing. The unit may be large and cumbersome, it may be seeded with people whom management knows are anti-union, or it may include people that management knows the union does not have the authority or desire to organize.

Management's authority to run the business as they think it should be run would certainly be compromised if a union was able to force an administrative change even before commencing collective bargaining. Such a victory at a stage as early as the unit determination hearing would be a moral gain of considerable import for the union. For this, and for efficiency reasons, managements have stoutly and quite successfully resisted any attempts to change their internal structure to accommodate collective bargaining, at least at the certification stage.

Since a bona fide manager is excluded from the definition of an employee, and thus from inclusion in any bargaining unit, company managements and unions have fought long and hard over the inclusion or exclusion of certain individuals from proposed units. Management feels that those with any authority must owe their first allegiance to the company and to put them in any bargaining unit is to put them in a difficult conflict-of-interest situation. The union sees such arguments as primarily a management attempt to infringe upon the bargaining rights of individuals who are as much employees as those usually allowed to organize.[101] The arguments have been long and eloquent from both sides, and the no man's land between the two positions has diminished only slightly in recent years.

Since they were largely industry-specific during the period covered by this study, the discussion of problems related to craft units and professional units has been confined to the chapter covering these particular issues. The important role played by bargaining history and the substance of the managerial exclusions debate will also be considered in the context of the sectors in which they played a major role.

FOOTNOTES

Introduction

[1] John Abodeely, The NLRB and the Appropriate Bargaining Unit (Philadelphia: The Industrial Research Unit, Department of Industry, Wharton School of Finance and Commerce, University of Pennsylvania, 1971), p. 229. "The term 'bargaining unit' is relatively recent in origin and became prominent around 1935 following passage of the Wagner Act by the Unites States Congress in that year. In the legal sense, the term refers to a group of employees represented by a particular labour organization which has been certified by a Labour Relations Board as the exclusive bargaining agent for all the employees in the group. Units of this type are the only ones with which employers are under a legal obligation to bargain" (Edward E. Herman, Determination of the Appropriate Bargaining Unit, Ottawa: Canada Department of Labour, Economics and Research Branch, 1966 , p. 1).

[2] H.D. Woods, Labour Policy in Canada, Vol. 1, Labour Policy and Labour Economics in Canada (Toronto: Macmillan of Canada, 1973), p. 134.

[3] Arnold R. Weber, ed., The Structure of Collective Bargaining: Problems and Perspectives, University of Chicago Graduate School of Business (New York: Free Press of Glencoe Inc., 1961), p. 9.

[4] Herman identifies three types of bargaining units: the certified unit that has the approval of a Labour Relations Board, the voluntary unit that may be created by the two parties in a voluntary recognition situation, and the actual bargaining unit, which is the group of people actually affected by a particular labour agreement. This latter unit may include one or both of the other two types (Appropriate Bargaining Unit, p. 1).

Weber goes even further in identifying four different types of bargaining units:

a. informal work groups--a group of people united by "a set of common aspirations and common interpretations of their environment";

b. the election district--or the "appropriate bargaining unit" approved by a Labour Board;

c. the negotiation unit--"the scope of the parties actually engaged in collective bargaining across the table"; and

d. the unit of direct impact--the unit that is ultimately affected by the terms of a particular agreement (Weber, Collective Bargaining, p. xviii).

The Boards in question here do not, in general, address themselves specifically to the question of the relationship of their approved units to those that the parties may in fact use, but the following comment may be taken as illustrative of the position of the Alberta Board: ". . . it should be pointed out that while the certificate gives the trade union the right to bargain collectively on behalf of the persons in the unit, the certificate in no way detracts from the parties bargaining different inclusions or exclusions in the collective agreement" (Letter from Mr. W. Canning, Registrar of the ABIR, to Mr. C. Nelson, N.B. Cook Corporation, 20 September 1976, ABIR LR-945-C-1).

[5] The retail trade is a good example of such a situation. Unions have long claimed that a wide area, multi-location organizing campaign is simply too risky given the vast resources they would have to invest in such a venture. More will be said on this matter in a later section of this study.

[6] Abodeely, Appropriate Bargaining Unit, p. 2. The Task Force on Labour Relations observed that "the determination can be a crucial decision to collective bargaining because the size and composition of the bargaining unit, the effective constituency of collective bargaining, determine to a significant extent the capacity of the employees for being organized into unions; and hence the likelihood of organization, the potential bargaining power of the union, and the point of balance it creates with the employer, and the potential effectiveness of collective bargaining for dealing with different issues; and hence the substantive matters that are covered in a collective agreement" (Report of the Task Force on Labour Relations, Canadian Industrial Relations, Ottawa: Privy Council Office, 1968 , p. 141).

[7] For a discussion of just how entrenched and powerful a union and its leadership can become, and what conditions are necessary to prevent this occurrance, see Martin S. Lipset, Martin A. Trow, and James S. Coleman, Union Democracy (New York: Free Press of Glencoe, 1956). Although they deal specifically with the International Typographical Union the authors also give a clear picture of the forces working toward executive domination of the membership in a union.

[8] An example of how unit configuration can influence the operations of a particular industry, including the operation of conciliation proceedings in that industry, is found in A.W. Craig's "The Consequences of Provincial Jurisdiction for the Process of Company-Wide Collective Bargaining in Canada: A Study of the Packinghouse Industry" (unpublished PhD dissertation, Cornell University, 1964). Woods also examines the problem of bargaining units and the realities of conciliation needs in Labour Policy and Labour Economics in Canada.

P.C. Weiler of the British Columbia Labour Relations Board summed up the "tension between the two uses of the bargaining unit" rather well. He observed that the scope of the unit: ". . . is the key to securing trade union representation and collective bargaining rights for the employees," but, also, that "a structure is needed which is conducive to voluntary settlements without strikes and which will minimize the disruptive effects of the latter when they do occur. Unfortunately, the lesson of experience is that these two objectives often point in different directions" (Insurance Corporation of

British Columbia v. CUPE 1965, Office and Technical Employees Union #378, the British Columbia Government Employees Union, and Teamsters #351 [1974], CLRBR, 407).

[9] Woods, Labour Policy and Labour Economics in Canada, p. 271.

[10] A.W.R. Carrothers, Collective Bargaining Law in Canada (Toronto: Butterworth's, 1965), p. 104.

[11] Ibid., p. 112.

[12] All of the legislation encountered in this study has provisions for specific groups beyond the grasp of the Labour Board. These exclusions relate to specific issues that will be examined later in this study, and will be discussed at that time.

[13] Woods, in Labour Policy and Labour Economics in Canada, (p. 95), delineated five areas of activity for the Ontario Labour Relations Board based on the broad scope of the legislation that the Board had in relation to other Boards at that time. The five functional areas were:

a. functions concerned with actual bargaining or negotiation;
b. functions involving specific clauses in agreements;
c. functions concerned with union agreements;
d. functions related to representation and collective bargaining units; and
e. functions involving labour relations and the courts.

Woods also noted that the primary functions of the provincial Boards were "determining bargaining units and deciding whether or not a particular applicant or intervenor union does, under the law, meet the requirements to be certified as the bargaining agent" (p. 87). He claims that the importance of the unit determination function is a logical result of the prohibition of the recognition strike since, in doing so the legislature made it necessary for the unions to approach some body, in this case the Labour Relations Board, with the authority to force the employer to bargain with his employees.

On this matter, Herman stated that "the determination of appropriateness of bargaining units and certification of labour unions as exclusive bargaining agents for these units are probably the most important functions discharged by Labour Relations Boards" (Appropriate Bargaining Unit, p. 8).

[14] Duron Ontario Limited v Labourers #183 et al., [1976], OLRBR, 737.

[15] Letter from Mr. G. Gough, Secretary of the ABIR, to P. Mattei, Carpenters Union, 19 June 1970, ABIR, LR-443-A-3.

[16] The possibility of the use of certiorari or mandamus proceedings is acknowledged, but the infrequency of their use in unit determination matters serves only to support my contention that the position of the Board in such matters is very strong. In the vast majority of cases involving unit determination the Board is the final point of decision.

[17] "What this implies is that, with the introduction of the certification process, union powers (as far as the recognition and determination of actual bargaining units are concerned) have, in a sense, been diluted and transferred to administrative agencies such as the Labour Relations Boards" (Herman, *Appropriate Bargaining Unit*, p. 11). Since the employer must deal with the union after certification and also refrain from interfering in the organizing stage, he too has forfeited most of his power to the Labour Relations Board.

[18] There is no preamble to the *Alberta Labour Act, 1973*, nor to the *Labour Code of British Columbia*, and the *Labour Relations Act* which governs the Ontario Board, reads only that: "Whereas it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practise and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees." However, Section 27(1) of the *Labour Code of British Columbia* instructs that the British Columbia Board is to carry out its duties and responsibilities for the purpose of:

a. promoting effective industrial relations in the interests of achieving and maintaining good working conditions and the well-being of the public;

b. encouraging the practise and procedure of collective bargaining between employers and trade-unions as the freely chosen representatives of employees;

c. promoting conditions favourable to the orderly and constructive settlement of disputes between employers and employees and between employers and trade-unions as the freely chosen representatives of employers; and

d. securing and maintaining industrial peace, and promoting harmonious relations between employers and employees.

This section also gives the Board the authority to "formulate general policies" in order to further the goals outlined above, but should these policies not prove fruitful, the Board is also not bound by the general policy in the "exercise of its powers or the performance of its duties."

In his Task Force support study, Herman points out that "the appropriate bargaining unit can vary according to what objectives one may have in mind" (Edward Herman, Task Force Support Study, "The Size and Composition of Bargaining Units." Ottawa, 1968). What is appropriate then depends on the principles and policy ideas of the individuals who are responsible for unit determination.

[19] The intent here is to deal only with the sections of the three Acts that relate to the unit determination function in general. Specific clauses dealing with specific issues (the status of professional and craft units, for example) will be examined when these issues are considered later in this study. The legislation referred to in this section is that most recently passed or amended by the provincial legislatures (July, 1977). Legislation in the labour field is a fluid thing and there were changes and amendments in these three provinces during the period covered herein. Those relating to particular topics will be duly noted and discussed when appropriate.

[20] The Alberta Labour Act, RSA 1973, c. 33, Section 50(1), parts (a), (b), (d), (e), (m), and (p).

[21] Ibid., parts (n), (o).

[22] Ibid., sec. 50(2), parts (a), (b), and (c).

[23] Ibid., part (d). Section 53 provides power to hold a vote on any issue where "it is desirable to have an expression of opinion of the majority of the employees."

[24] Ibid., sec. 51(1). [25] Ibid., sec. 51(2). [26] Ibid., sec. 51(3).

[27] Ibid., sec. 49, part (n). [28] Ibid., sec. 71(1), part (b).

[29] Ibid., sec. 71(2), part (a). [30] Ibid., part (b).

[31] Ibid., part (c). [32] Ibid., parts (a), (b), (c), and (d).

[33] Ibid., sec. 49, part (h). [34] Ibid., sec. 2(2).

[35] The Labour Relations Act, RSO 1970, c. 232, as amended 1975, sec. 6(1).

[36] Ibid., sec. 6(1a). [37] Ibid., sec. 6(1). [38] Ibid., sec. 1(3).

[39] Ibid., sec. 1, parts (g) and (l).

[40] Ibid., sec. 6(3) and (4).

[41] Ibid., sec. 6(2). To qualify for a craft unit:
a. those involved must exercise a technical skill and be distinguishable form other employees;
b. those involved must normally bargain separately through a union that normally represents people of such skills; and
c. such a union must be making the application.

[42] Ibid., sec. 7(2).

[43] Ibid., sec. 1(b). "Bargaining unit" means a unit of employees appropriate for collective bargaining, whether it is an employer unit or a plant unit or a subdivision of either of them.

[44] Ibid., sec. 2.

[45] Labour Code of British Columbia, SBC 1973 (Second Session), c. 122, sec. 34(1), (2). Sec. 42 directs directs the Board to determine the appropriate unit and conduct whatever investigation seems necessary in order to determine the merits of the application.

[46] Ibid., sec. 34(1), part (p). [47] Ibid., part (u).

[48] Ibid., part (v). [49] Ibid., sec. 34(2). [50] Ibid., sec. 32(2).

[51] Ibid., sec. 41(1).

[52] Ibid., sec. 40. "The Board must hold a hearing in this case and allow all parties a chance to present evidence, and then it must hold a representation vote.

[53] Ibid., sec. 43(1). [54] Ibid., sec. 43(2).

[55] Ibid., sec. 43(3). [56] Ibid., sec. 44(2). [57] Ibid., sec. 48.

[58] Ibid., sec. 47. [59] Ibid., sec. 57.

[60] Ibid., sec. 1(1). "Unit means a group of employees, and the expression appropriate for collective bargaining or appropriate bargaining unit, where used with reference to a unit, means a unit that is determined by the Board to be appropriate for collective bargaining, whether it is an employer unit, craft unit, technical unit, plant unit, or any other unit, and whether or not the employees therein are employed by one or more employers."

[61] Ibid.

[62] When the decision is a particularly difficult one, Labour Relations Boards occasionally note that the whole matter must be viewed, not only on the relevant facts, but also in the light of the intent of the legislative body:

"It seems to this Board that, on the contrary, Parliament has willed that many additional employees enjoy the protection of bargaining rights, such as professionals, constables, persons whose functions include supervision of others, and so forth. New provisions even extend such rights to new classes of persons . . . this being so, then exclusions must be the exception and there must be very serious reasons to warrant them" (Transair Limited v the Canadian Association of Industrial, Mechanical and Allied Workers #3 [1974], CLRBR, 282).

[63] A clear distinction is being made here between policies and criteria. Criteria are specific elements of the situation considered by the Board when looking at a specific kind of problem, for example, the actual exercise of the supposed authority to hire and fire in managerial exclusion questions. Policies, however, are what make up the general framework considered by the Boards in virtually all unit determination questions.

[64] John Abodeely was not overly impressed with the way in which the National Labour Relations Board in the United States elucidated or followed any of its principles.

"The absence of congressional guidance and the conflicting interests of the parties have caused serious problems for the members of the National Labour Relations Board. The vacilating trends and inconsistent results in many of the unit cases provide substantial evidence of the severity of this problem. An anlysis of these same cases will reveal that much of the confusion in the area of unit determination is attributable to the Board itself" (Abodeely, Appropriate Bargaining Unit, p. 6).

[65] Woods, Labour Policy in Canada, 1:7.

[66] R.M. Hall, "The Appropriate Bargaining Unit: Striking a Balance Between Stable Labour Relations and Employee Free Choice", Western Reserve Law Review (1967):18-483.

In lamenting the all-too-often desire of an applicant for a smaller unit, the British Columbia Board recently complained that "the result is often a chaotic patchwork of bargaining units dividing up the employees of one employer, a situation that is almost impossible to rationalize later on" (Insurance Corporation of British Columbia v CUPE #1695 1975 , 406).

This "chaotic patchwork" might be traced to the Board's desire to avoid obstructing employee organization efforts. In the U.S. this practise of using the "extent of organization" in determining the appropriate unit was struck down in the Taft-Hartley Act which instructed that in unit determination decisions "the extent to which the employees have organized shall not be controlling" (The Labour Relations Law Casebook Group, Labour Relations Law Kingston, Ontario: Industrial Relations Centre, Queen's University, 1974 , p. 140).

[67] Canadian Industrial Relations, p. 119.

[68] Mr. R. Reierson, Alberta Minister of Labour, letter explaining the Alberta Labour Relations Board's decision in the case of Chemcell (1963) Limited (Chemcell (1963) Limited v Carpenter's #1460 1969 , ABIR, LR-1016-C7).

Since 1969 the Alberta Labour Relations Board has supported the principle of stability, whether the question involved units within a particular plant, as was the case at Chemcell, or units for different locations of the same employer.

"Although the Board recognizes and appreciates the wishes of employees at individual site locations to gain a separate identiy in collective bargaining, the Board seeks to establish an environment that will provide stability in collective bargaining relationships, and, in the opinion of the Board, effective collective bargaining would best be facilitated by an area unit" (Scot Young (Western) Limited v CUPE #1231 [1976], ABIR, LR-2151).

The principle was applied at the outset in the registration of employers' associations and, despite an existing structure, also in the hospital industry.

"While the Board is cognizant of bargaining relationships of longstanding, such as those of the Operating Engineers in the hospital industry in general and with this employer in particular, as well as the relationships of the Canadian Union of Public Employees Local #936, with this employer, the Board has, in recent decisions, sought to establish consistent and uniform units to avoid fragmentation and the multiplicity of units in the hospital industry. There are a number of small units within the hospital industry which are represented by various bargaining agents and these units may not lend themselves to the units which the Board has deemed to be appropriate" (Calgary Hospital District #93 v Nursing Aides [1976], ABIR, LR-552-M-1).

[69] "'Certification' and the 'contract bar' principle guarantee

to the incumbent union sole representation rights for a period of time. But the rights of employees at statutorily specific times, to rid themselves of the bargaining agent by withdrawing support or by transferring support to another union, preserves democratic control, at least in form, and, to a considerable degree, in fact" (Woods, Labour Policy in Canada, p. 147).

[70] In general, the application must be made at the proper time in the life of an existing collective agreement, the application cannot be made too soon after a previous application and the applicant must be able to prove it has support from within the proposed unit, although the Board will usually order a vote in such matters. (This assuming the applicant was able to convince the Board that the unit was at least a feasible one.)

[71] Riverdale Hospital v The Health Sciences Association of Metropolitan Toronto, and CUPE #79 (Intervenor) [1974], OLRBR, 353.

[72] Canadian Pacific Limited v Trade of Locomotive Engineers [1976], OLRBR, 370.

[73] For example, Mr. J. Rohaly of the Purity Co-Op wrote a letter to Mr. R.B. d'Esterre of the Alberta Labour Relations Board stating:

"You have put me in a position where I have to deal at the immediate time with two unions, and I feel that this is a very unjust decision on the part of the Board, and I would ask if the Board would reconsider and allow the employees of Purity Co-Op Ltd. to go to a vote and decide for themselves which of the two unions they would accept as a bargaining agent for the whole of the Calgary branch" (Purity Co-Op (Cal) v Butchers #P 319 [1970], ABIR, LR-418-P2).

[74] This statement was originally made by the Ontario Board in the McMaster University case. It is quoted here from the dissenting opinion of Board member J.E.C. Robinson in the case of Forest Public House v The Hotel and Restaurant Employees Union #743 (Forest Public House v Hotel and Restaurant Employees Union #743 [1974], CLRBR, 63).

Despite the Forest Public House decision, the Board still appears to adhere to the principle. More than a year later, the following appeared in a Board decision:

"The Board's concern is that the bargaining unit be viable in the sense that it maintains operational efficiency in the employer's business, uninterrupted by the establishment of a collective bargaining relationship" (Niagara Regional Health Unit v Health Services Association of the Regional Municipality of Niagara Falls, and CUPE (Intervenor) [1975], OLRBR, 382).

[75] Canadian Pacific Limited v Trade of Locomotive Engineers.

[76] Canadian Industrial Relations, Task Force, p. 119.

[77] Carrothers' Collective Bargaining Law ch. 12, and J. Sack, and M. Levinson's Ontario Labour Relations Board Practise (Toronto: Butterworths, 1973), pp. 52-57, both contain excellent detailed sections on the question of the meaning of "trade union".

[78] Such a policy may not be totally attributable to underlying suspicions about such a cosy arrangement. The Canadian Labour Relations Board claims that unit determination questions are simply far too important to be left up to the wishes of the employees, the employer, or some agreement between the two. (Canadian Pacific Limited v Trade of Locomotive Engineers).

[79] Herman, Appropriate Bargaining Unit, p. 13.

[80] Tamco Limited v International Union of Automobile, Aerospace and Agricultural Implement Workers of America [1975], CLRBR.

[81] University of Guelph v Guelph University Firefighter's Union, and CUPE #1334 [1975], CLRBR.

[82] In rejecting a recent application that would have required it to change its policy and practise in the construction industry, the British Columbia Labour Relations Board explained that:

"Once a Labour Board makes a decision for a jurisdiction, the parties in that jurisdiction rely on it and adjust their behavior to it . . . for us now to begin to unravel that pattern, by reference to the practise in other jurisdictions, could do great damage to the expectations of those involved in labour relations in the construction industry in British Columbia, which must be our primary concern" (Provincial Council of Carpenters v Construction Association of British Columbia and Wood, Wire and Metal Lathers #207 [1974], CLRBR 428).

Some writers even suggest that the Boards should not be consistent only within their own sphere of activity, but that they must consider the activities of other government agencies as well:

"The decisions of a government agency with respect to unit determination, scope of bargaining, dispute settlement procedures, etc., must be consistent and supportive to other government regulatory powers concerning licensing of personnel . . ." (R.L. Miller, "Collective Bargaining in Hospitals." Hospital Administration, July 1976, p. 64).

[83] The Ontario Labour Relations Board recently rejected a request to exclude hypothetical additions to the personnel department staff on the grounds that it had to consider the case on its actual merits, and that to do otherwise would expose it to accusations of ignoring natural justice. (Duplate Canada Limited v United Auto Workers, and Employee Group (objectors) [1975], OLRBR).

[84] It appears that feelings can often run high over the matter of the boards' recognition of the peculiarities of the particular case at hand. Some individuals believe that the board should not be so presumptuous as to declare what criteria or policy should be used or followed, but should consider each case a unique matter. Witness this comment to the British Columbia Labour Relations Board:

"The only safe criteria is to deal with the facts as they arise from day to day in a way that does not bind the Board's hand to mould new structures later as the facts change. The Board should not try to play God until employees become angels" (Woodward Stores (Vancouver)

Ltd. v Graphic Arts International Union #210, and Bakery Workers #468 [1974], CLRBR, 117).

[85] "Although the cardinal rule of the Boards is that each case must be decided on its own merits, nevertheless, in practise and when determining the appropriateness of units, the Boards pay considerable attention to prior decisions from which policy principles emerged concerning the eatablishment--or other establishments of the same employer, or of identical, similar, or analogous industries" (Herman, Appropriate Bargaining Unit, p. 13).

[86] Abodeely, Appropriate Bargaining Unit, p. 7. Herman also echoed similar sentiments: "The one criteria most favoured by the Boards is the concept of community of interest" (Appropriate Bargaining Unit, p. 43).

[87] Carrothers in Collective Bargaining Law, lists substantial community of interest as a factor in unit determinations, then lists separately: common duties, skills and working conditions, transferability from one unit to another, and coherence of the unit as though they were separate matters that had no relation to community of interest. In Appropriate Bargaining Unit, Abodeely treats community of interest separately, as though his other enumerated considerations (geography and physical proximity, functional integration, employers' administrative structures and employee interchange) had nothing to do with creating a community of interest. Sack and Levinson take the most rational approach in recognizing that several of these factors are important in determining community of interest (Ontario Board Practise, p. 61).

[88] For example, if job allocation is a major bargaining topic in a particular industry and a board is looking at a multi-location unit, it may be wise to see what practises there are in the separate locations. In a small, restricted labour market in one location each man may do several jobs when and as needed, while in another location it may be accepted practise to hire a man to do a specific job only; the two locations may have a distinctly separate community of interest on this issue.

[89] If the applicant is seeking a single-location, single-employer unit then geographical separation will hardly be an important consideration in the case.

[90] Abodeely argues that because of this ability to vary the weight given to various community of interest factors, the N.L.R.B. has been able to justify almost any decision by giving the supportive factor controlling weight. He feels that the criteria are more often used to support a decision rather than reach one (Appropriate Bargaining Unit, p. 12). He attributes this "shifting criteria" process to the rather vague definitions given to the criteria. (If nobody is quite sure what the criteria mean, you can apply them almost any way you want.)

[91] The Report of the Preparatory Committee on Collective Bargaining in the Public Service recommended that units in the Public Service be closely related to methods of payment. The committee felt that "of all the subjects that bargaining may touch, none is more vital than rates of pay" (J. Finkelman, The Rationale in Establishing Bargaining Units in the Federal Public Service of Canada, Kingston, Ontario: Industrial Relations Centre, Queen's University, 1974; reprint series No. 25, p. 3).

[92] A major problem encountered in the use of this criterion is the confusion that results if the employer changes his administrative structure. (A particularly hostile employer might even make such changes in order to impede the smooth operations of the bargaining agent.)

[93] A high level of interchange may also be taken as an indicator of the lack of a distinctive and separate company division and also a lack of a distinctive and separable type or level of skill within the group.

[94] In his Task Force Support Study, Herman momentarily drops any distinctions between policy and criteria and instead divides the various considerations into groups depending on what the particular concern is:

a) Those concerned with the institutional arrangements of the parties involved:
  (1) membership rules of the union,
  (2) nature of employers' administrative structure,
  (3) history of union organization;
b) Type of work involved:
  (1) community of interest of workers,
  (2) interchangeability of employees,
  (3) common wage and employment practises; and
c) Those concerned with preserving freedom of choice for the participants:
  (1) wishes of employees,
  (2) bargaining history of the union,
  (3) bargaining history of the employer.

[95] Herbert Northrup has argued that because of the tremendous size and complexity of the present union movement, there are really three groups involved: the full time staff workers and union officials, the actual union membership, and the employer. He claims that the actual aims of the union membership and their leaders are now sufficiently different to warrant their treatment as separate entities ("Spatial Relationships in the Collective Bargaining Process." quoted in Weber, Collective Bargaining, p. 76).

[96] Herman, Support Study.

[97] "In setting its bargaining policy, a union tries to develop the type of bargaining structure within which it can exert the most influence on behalf of its membership. There is no single union policy

dealing with the size of bargaining units, nor is there any compulsion for a given national union to adopt a fixed policy that has to be applied under all circumstances" (Peter Henle, "Union Policy and Size of Bargaining Unit," cited by Weber, Collective Bargaining, p. 111).

[98] The perfect example being the building trades in the construction industry.

[99] "It is not unreasonable to expect that a union seeking representation rights will petition only for a grouping of employees which it can successfully organize" (Abodeely, Appropriate Bargaining Unit, p. 3). Abodeely goes on to say that:

"The task of determining an appropriate unit has been further hindered by the fact that the union, while presumably representing the best interests of the employees, does have a life of its own. Its existence as an effective force in a dynamic society requires it to continually search for additional dues-paying members. One commentator has noted that "the union frequently has objectives independent of employee rights, so that in requesting a particular unit, the union may be seeking not so much to vindicate employee interests as to sweep additional employees into its jurisdiction or simply to prevent a rival union from organizing a group of employees which it wants for itself" (Abodeely, Appropriate Bargaining Unit, p. 4).

[100] Chamberlain lists these objectives as:

(a) steady employment providing an adequate income;
(b) the rationalization of personnel policies;
(c) a voice in decisions affecting membership welfare;
(d) protection for the membership from economic hazards beyond their control; and
(e) recognition and participation for labour on the basis of equality.

(Neil W. Chamberlain, Sourcebook on Labour, New York: McGraw-Hill Book Company, Inc., 1958 , p. 74).

[101] See "The Managerial Problem" in this study for a more complete discussion of this issue.

Chapter 2

THREE MAJOR PROBLEMS

THE CRAFT UNIT QUESTION

Wherever and whenever certification procedures have been made part of labour legislation, the problems of craft units and craft unionism have appeared as J.A. Willes observed:

> The determination of the appropriate bargaining unit for craft employees has probably presented Labour Relations Boards in Canada and the United States with more difficulties than any other single aspect of the bargaining unit.[1]

Labour relations boards have had to decide what constitutes a craft, what is a proper craft unit, if any, and what can or should be done with craftsmen if their desires do not coincide with prevalent labour board policy. These decisions are usually related to requests for the Board to either separate a group of employees from the larger unit they are already a part of, or for the Board to certify a separate craft unit where no representation rights have been given.

Since the enactment of the Wagner Act in the United States, labour boards have developed, out of necessity, a series of tests that may be applied in order to ascertain whether a particular job function is such that those performing the work are eligible for special treatment as "craftsmen". By developing these tests they have developed a working definition of the word "craft".

When ruling on the status of a would-be craft unit, the Canada Labour Relations Board examines each of the following:

a) the extent of training;

b) the distinguishability of craft employees from other employees in the industry;

c) previous instances of voluntary recognition of similar craft units in the industry; and

d) the local conditions and manner in which the work is organized and carried out in the employer's establishment.[2]

In the United States the National Labour Relations Board examines similar criteria in considering craft severance cases:

> The Board required the applicant union to establish that the group in fact was a true craft and not simply a group of semi-skilled employees performing similar tasks. In particular, the Board required the craft union to establish that its members required a relatively lengthy period of training or apprenticeship, and not merely a few months' training; that the group requesting severance included all of the employees exercising the particular skill, and that the unit proposed did not contain too many lesser skilled persons associated with the work.[3]

Carrothers observed that the labour relations boards in Canada (including British Columbia and Alberta) used all or some of the following criteria when faced with a craft unit determination problem:

a) whether the group's "craft" was distinguishable from other types of work;

b) the type and frequency of interchange with other employee groups;

c) the extent to which the group enjoyed separate supervision and a work location separate from that of other employees;

d) the unit status of similar groups of employees in the rest of the industry;

e) the extent of, and type of, recognition afforded the group by the trade union movement itself (does the group traditionally bargain separately through a specialized representative?); and

f) whether the employer acknowledges that the group has a right to separate representation.[4]

The Ontario Labour Relations Board looks for two general characteristics when dealing with craft applications. The Board requires that by the nature of the skills they exercise the group be clearly distinguishable from any other group. The group must also be normally represented by a union that is commonly associated with the skills the applicants possess, and the application before the Board must have been made by just such a union.[5] If the application involves the severance of a unit from a larger unit, considerable attention is also given to the type of representation the alleged craft group has received.[6]

There are obviously certain similarities in the practise of the various boards. Each is looking for a work characteristic that makes the group clearly different and distinguishable from the rest of the employees. The work may require special training or be done in a special location with special equipment. The work is not repetitive and "mechanical", but requires many different actions and a certain degree of independent judgement. It may be necessary to provide separate supervision because of the more complex nature of the work. The standards necessary for the work may be such that little supervision is required at all, those doing the work having enough knowledge, maturity, and self-discipline to be trusted to do the work properly, at least for the sake of maintaining the standards of their craft.

Each board places considerable weight on the past activities of proposed craft groups. If the group has been distinctive enough to warrant recognition in the trade union movement (as evidenced by the continued existence of its own bargaining agents and respect for its claim to a certain work jurisdiction) for a long period of time, then boards will look more favourably upon a request for a separate unit. Groups such as the skilled tradesmen in the construction industry (plumbers, carpenters, electricians, painters, cement masons, iron workers, and operators), the skilled workers in the printing industry (lithographers, photo engravers), and those having particular skills in a generally unskilled work force (textile cutters and trimmers), have all been recognized as legitimate crafts because of their long histories of separate organization and representation in their respective industries.[7]

The concept of a "craft" may be understood not only in terms of the uniqueness of the job functions involved, but also in the different market orientation taken by such groups. The influence of the market was pointed out by Weber:

> It has been fairly well accepted that bargaining units of the craft type tend to be coextensive in area with the relevant labour market. The interests of the members of a craft unit cross industry lines and center on marketing to best advantage an occupation or skill, in whatever industrial context it may be found. There is no certainty, of course, that the unit will expand to embrace all employers of the craft within the labour market area, or even in a particular industry within the labour market area, but it is unlikely that there will be any effort to pass beyond the bounds of the labour market once they are reached.[8]

The idea of "craft" relies heavily on two previously-discussed concepts: community of interest and stability. The importance of past practise and recognition is clearly expressed in the criteria used in determining craft status. What has already been done in the relevant industry and the trade union movement itself is crucial. In keeping with their policies regarding stability, labour relations boards are not eager to tamper with existing patterns of craft recognition. The craft unions claim that the community of interest of their members is so unique that they should be in a unit of their own, separate from whatever other units the board may wish to authorize.[9] These unique interests even extend to a labour market rather than a product market orientation.

Craft unionism and craft units are a "problem" for labour relations boards because of the evolving nature of production methods. When each employer operated on a small scale, with a labour-intensive type of system, craft units were the logical form of organization. Skill levels were high and the need for such people was great. The introduction of mass production techniques, with the increase in the role of machines and the necessary decrease in the role of individual skills, produced a shift in the nature of the work force. Semi-skilled or unskilled workers were needed to operate the machines, and they were needed in large numbers. The plant-wide industrial unit appeared the more practical form of bargaining structure given the desire to promote organization (because of their lower and less-distinguishable skill levels, large groups of employees could not enter craft units and thus were left unrepresented under the craft system), but the industrial form of organization directly threatened the survival of craft unions, the two philosophies being totally opposed, as indicated in this comment by the Queen's University Labour Law Casebook group:

> Craft unionism postulates that workers should bargain together if they share common skills; industrial unionism focuses on common membership in the work force of an employer, regardless of the type, or even presence, of job skills.[10]

These opposing philosophies have forced labour relations boards to again face the problem of choosing between the rights and freedoms of an individual or a small group, and the desires or needs of a larger group. It is the individual rights versus stability question revisited.[11] The craft union supporters have a good case, as pointed out by Willes:

> In addition, the arguments put forth by the craft supporters were difficult to ignore, since they were based, for the most part, on the right of self-determination, and the need for protection of the rights of minority groups.[12]

In granting a small group their desire for a separate identity, a labour relations board is actually denying the rights of the majority, who may desire one large unit for the employer or location. When making such decisions board members must consider the interests of four groups: the public, the craft unions, the industrial unions, and the employer.

There is little direction to be found in examining the public interest. Labour stability is better served through the use of larger units, but the public also has an interest in the upholding of individual and minority rights and the recognition of freedom of choice.[13] Considering the effects of labour instability in the particular industry in question is the best approach open to the board. If the effects of instability are likely to be severe, public interest considerations dictate that individual interests must suffer, but to whom may the labour board turn for help in defining the word "severe"?

The position of the craft unions is much clearer. Craft unions maintain that craftsmen are largely interested in protecting the standards and work jurisdictions of their crafts. They can do so only by bargaining separately. A large industrial-type unit results in a decrease of status for that group and, much more importantly, an erosion of the economic position of the group. It is unfair and unreasonable to expect craftsmen to settle for wages and benefits inferior to those they could have obtained as a separate group.[14] Craftsmen also argue that in denying them the rights to separate representation, labour relations boards will adversely affect the supply of skilled labour. Large industrial units promote similarity in working conditions; in particular, a narrowing of wage differentials. This, in turn, reduces the incentive for young workers to undertake the training programs needed to acquire the skills of a craft,[15] and increases the likelihood of future bottlenecks in the labour market.

Industrial unions insist that the fragmentation resulting from a craft-type organization makes it harder for all the units to bargain effectively, and almost impossible for those who do not possess irreplaceable skills. The "united front" or organized labour would crumble because small groups "that possessed key skills would be able to receive benefits at the expense of the semi-skilled and unskilled, if the cost of providing benefits to small craft groups was low in terms of the total additional labour cost to the employer."[16] Placing some groups of organized employees in hopelessly weak positions, and then expecting them to carry on a collective bargaining relationship, is not conducive to peaceful and productive labour relations. Industrial unionists feel that by including a powerful craft group in a potentially weak, unskilled group, a more favourable balance of power is achieved. In order to hold the support of the craft groups, industrial unions can and have provided special provisions for the craftsmen in the internal operations of the union.[17] Industrial unions also promote stability by being better able to absorb the growing influence of technological change. It is potentially unstable to build a bargaining structure on the shifting sands of job functions,[18] and the problem grows worse as the speed of technological change increases.

Employers naturally favour the structure that gives them the greatest flexibility with the least likelihood of interruptions in operations. The large industrial unit meets these desires. The chances of a work stoppage are greater if the number of separate units is greater. The ability to make adjustments in the shape, size, or location of the work force is much more limited if a large number of units exist. The time, effort, and resources devoted to the industrial relations function are likely to produce a more predictable, yet flexible, situation under industrial unionism.

The legitimacy and persuasiveness of the arguments on both sides of the craft unit question are illustrated by the vacillating position of the NLRB in the United States. After the passage of the Wagner Act in 1935, the NLRB applied community of interest criteria to craft unit questions, and in many cases granted craft units. However, community of interest did not always produce clear-cut answers; the arguments for a larger unit could offset community of interest criteria and leave the labour relations board precisely where it started. In the Globe Machinery and Stamping Company case the NLRB decided that, when all else was equal, an employee vote would decide the question. Under criticism for craft favouritism, and because the Globe doctrine did not help much in cases where craft severance was requested, the Board adopted a new approach in the 1939 American Can Company case which involved craft severance. The new policy denied severance to craft units if it could be proven that the incumbent union did bargain on behalf of the crafts. This policy shut the craft unions out of the already-organized mass production industries, and was understandably poorly received by them.

The craft unions received some respite from the post-war decision in the International Minerals and Chemicals Corporation case. Here, the NLRB allowed craft severance from an existing unit if the applicant could prove that those seeking severance had not had a prior opportunity to express their opinions regarding type of representation. The Taft-Hartley Act prevented the NLRB from refusing craft severance just because the unit was already part of a larger unit, but the Board tempered the provision by holding in the National Tube Co. case of 1948 that severance could still be denied on grounds of the inappropriateness of the proposed or remaining unit. The craft policy was then left undisturbed until 1954 when, in the American Potash and Chemical Corp. case, the Board decided that severance would be granted only if the applicant union was one that traditionally represented such a group. The policy favoured craft severance, but its arbitrariness was revealed in the Board's outright blanket denial of craft severance in the basic steel, wet milling, lumbering, and aluminum industries because of the high level of integration in these industries. The policy and its justification were severely criticized because there were several other industries at least as integrated as those excluded by the Board, but the door was left open for craft severance in these other industries.

The dubious decision of 1954 was quashed in the 1959 court battle related to the Pittsburgh Plate Glass Company. The policy was ruled arbitrary and the court pointed out to the Board that it was required to review each case on its own merits. The Board has done this ever since, though it was only in the 1966 Mallinckrodt Chemical Works decision that the Board "freed" the four captive industries and clearly delineated its criteria regarding craft severance.[19] The policy regarding new units was not as strict as that in severance matters, and J.A. Willes has clearly explained the reasons for the differing policies:

> These separate policies of the National Labour Relations Board represent an attempt by the Board to strike a workable and equitable balance between the right of self-determination and the goal of stability in labour relations. By distinguishing between craft applications where the employees do not have a history of bargaining, and where the craft wishes to sever from a broader unit, the Board has attempted to provide craft employees with maximum freedom of choice where they have not bargained before, yet maintain stability in labour relations where satisfactory bargaining relationships have been established.[20]

The pendulum did not swing as much in Canada. Legislation in Canada benefited from U.S. experience and, in general, crafts were recognized if the group was easily distinguishable and bargained through a union pertaining to its skill. (Craftsmen were allowed to vote in Globe-type elections.[21]) The various boards were conscious of their role in promoting the spread of collective bargaining and tried to avoid hindering organizing. More recently the interest has been in the promotion of industrial stability and the recognition of traditional crafts. Severance is not easily obtained and certification for new craft units is heavily influenced by traditional patterns of union or industry organization. Edward Herman remarked that:

> The ABIR practise is to recognize, as eligible for certification, only those crafts that are well established occupations with a tradition of collective bargaining in the province.[22]
>
> Pugh's paper, as well as a review of a number of decisions by the ABIR, seem to indicate that the Board, similar to most other Canadian Boards, is reluctant to carve out craft units from existing, certified, bargaining units.[23]

When Edward E. Herman made the preceding comments he also noted a statement made by Mr. K.A. Pugh, then Chairman of the Board and Deputy Minister of Labour in Alberta, which indicated that he felt the legislation gave no special weight, conditional or otherwise, to either type of unit in Alberta. The situation has not changed since. The Alberta Labour Act, 1973, includes no directions for the Board to apply special criteria in certain circumstances, or to favour craft units under certain conditions. The Board has the exclusive power to certify units and can create whatever unit it deems to be appropriate in the situation at hand. The Alberta Board still recognizes traditional craft organizing patterns (construction, for example) and it is still reluctant to recognize new crafts or carve up the bargaining structure in large establishments (e.g., Hospitals).[24]

> Thus the practise of the OLRB, in most instances, is to refuse certification applications requesting the severance of craft units from industrial units; however, the Board still continues to certify traditional craft units in cases where:
> 1. the union is appropriate to represent the craft;
> 2. the craft employees are not represented by an industrial union with other plant employees; and
> 3. the incumbent and the respondent union agree to such certifications.[25]

The Ontario practise, as commented upon by Edward Herman, has not changed since. The role of the Ontario Board in determining craft units is, however, much more restricted than that of the Alberta Board. Section 6(2) of the Ontario legislation instructs the Board to certify a craft if it "commonly" bargains separately through a union that pertains to the skills of that craft through "established" practise.[26] If a union can prove that it represents a traditional craft, that it has done so in the past, and that the question is not one of unit severance, the Ontario Board then, theoretically, must certify the craft unit. The Board has made the Section more stringent by requiring the applicant to prove that it had a bargaining history in the industry in question, or in one very similar to it.[27] In questions of unit severance, the Ontario Board, like that of Alberta, still does not look favourably upon the proposal:

> Apart from the statutory requirement that both the craft and the union be appropriate, the only situations where craft groups may confidently expect the Board to look favourably on their applications would appear to be where all parties consent to the severance, or where the incumbent union has clearly exhibited a complete disregard for the interests of the craft group in its bargaining with the employer.[28]

> Whenever the BCLRB grants craft certification, it generally confines this to well-established crafts with a history of collective bargaining in the province. The BCLRB favours industrial units over craft units, except in industries where bargaining is traditionally conducted on a craft basis, such as in printing and construction.[29]

The British Columbia Board also "refuses to carve out units from existing certified units or from units subject to collective agreements."[30] Despite the introduction of new labour legislation in 1973, the basic position of the Board, or at least that indicated by its decisions, has not changed. Established organizing patterns are still recognized, and attempts to create new craft units or fragment existing structures are still frowned upon.[31] The legislation does require the Board to certify a craft or professional unit if it is distinguishable enough, if the applicant union pertains to such skills, and "if the group is otherwise an appropriate bargaining unit."[32] There is also provision for the inclusion of craft or professional people in a unit of other employees if the craftsmen so desire,[33] but, unlike the Ontario statutes, there is not a clear reference to the role of tradition. The inclusion of the word "profession" also appears to leave more room for the creation of new professional craft-type units than the Ontario legislation allows for.

The dominant themes in these three jurisdictions are certainly still tradition and stability. Either because of statutes, or because of Board policies, it is very difficult for a new craft to establish itself, and almost as difficult for an established craft to carve off a unit from an existing bargaining unit. The traditional crafts have a limited opportunity to organize in new establishments, but once a bargaining relationship is begun, the likelihood of craft union intrusion is small.[34]

The craft unit issue is still very much alive, though some of the problems may have been shifted to the unions themselves because of the preference for industrial-type bargaining structures.[35]

There are three obvious alternatives open for new efforts in craft unit public policy: the status quo approach, whereby labour boards continue to retain their basically anti-craft stance; the Task Force stance, whereby all statutory protection for crafts would be disposed of;[36] and an attempt to create a new union structure that, while allowing for the differences in craft interests, would also produce the stability sought by labour relations boards. The latter would seem to be the best alternative, although it would not be without its problems.[37] Getting groups who have bargained separately for many years to co-operate may be tremendously difficult,[38] but as the tradition-based policy of labour boards continues to restrict the activity of craft unions, it may become clear that mutual co-operation is the only way for the craft unions to continue to expand. By co-operating in joint efforts, craft unionists may prove that they can produce the stability that public policy requires.

THE MANAGERIAL QUESTION

The stormy debate over the status of certain members of the "managerial group" in unit determination questions is rooted in the apparent conflict between two freedoms or rights that are generally recognized as pivotal in the operation of a capitalistic, democratic society: the freedom of association, and management's right to manage. The intent of the union movement to have a direct and substantial influence on the working conditions of its membership poses an obvious threat to management's belief in their right to be free to make whatever decisions are necessary in order to ensure the long-term survival of a business. Business owners or managers have long claimed that for the free enterprise system to survive as we know it there must be a "genuine acceptance by organized labour of the functions and responsibilities of management to direct the operation of an enterprise."[39] Legislative endorsement of the collective bargaining process upset the powerful position of company managers by forcing them to deal with their organized employees, and in doing so required managers to consider the response of said employees when considering any particular decision. The extent of this consideration depended largely on how well the particular company managers had defended their right to manage against union encroachment during the on-going collective bargaining process. The process itself is intended as a mechanism by which the two parties resolve their differences as relative equals in a power sense. If either party is in an overwhelmingly strong position, real bargaining cannot and will not take place, and it is because of the importance of maintaining this power balance that the managerial exclusion question is vital.

The management argument is that, given the desire to make collective bargaining work, company officials must be allowed the necessary tools to defend their position at least as forcefully as the union. One of these tools is the existence of a reliable, loyal, "unorganized" core of managerial personnel. On its side of the table, management must have people whose interests parallel those of the company. To allow any union encroachment on the loyalty of these people seriously undermines the company position in collective bargaining and ultimately destroys the power balance which would, in turn, mean the end of the system itself.[40]

The position of organized labour is based on the principle that is still the major support of the union movement: the freedom to associate. The Task Force recognized the importance of this freedom:

> Freedom to associate and to act collectively are basic to the nature of Canadian society and are root freedoms of the existing collective bargaining system. Together they constitute freedom of trade union activity: to organize employees, to join with the employer in negotiating a collective agreement, and to invoke economic sanctions, including taking a case to the public in the event of an impasse. Collective bargaining legislation establishes rights and imposes duties derived from these fundamental freedoms, just as legislation in other fields protects and controls corporate action.[41]

While acknowledging the exempt positions of top level management, unions claim that there are no grounds for denying a right as basic as freedom of association to lower and middle-level management. The functions performed by these people in no way justify denying them their rights.

As would be expected, the debate has been centered on the lower levels of the managerial corps (or the upper level of the employee group if you are a trade unionist). Foremen, lower-level supervisors, and, more recently, professionals, occupy positions that are not clearly in either camp. Excellent arguments can and have been made for inclusion in or exclusion from bargaining units by both parties to the dispute. It is to the nature and history of this debate that we now turn.

As in the dispute over the position of the crafts, the general outline of the dispute is most clear in the United States. The problem was first encountered there, and the respective arguments were voiced over decisions taken by the NLRB or the Congress.

The Wagner Act of 1935 did much to confuse the issue surrounding the status of lower-level "managers" like foremen and supervisors. There was a vague definition of the employer as "any person acting in the interest of an employer, directly or indirectly."[42] and an employee was "any employee".[43] The Act was to apply only to "employees" as they were defined. E.V. Wahn points out the position originally taken by the NLRB:

> Nonetheless, the National Labour Relations Board, soon after its appointment in 1935, established a firm policy of excluding from the bargaining unit all senior and middle managers who were actually involved in the formation and implementation of policy, and any lower echelon personnel, such as secretaries and clerks who performed duties of a confidential nature relating to labour-management relations. However, the Board's policy in respect to the first level management group, foremen, was very inconsistent, vacillating markedly during the years 1935 to 1947.[44]

In the 1942 case of Union Colliers Company, the Board decided that supervisors were employees, and since they were not specifically excluded, they could enjoy the privileges of the Act, but after a membership change the NLRB decided in 1943, in the Maryland Drydock case, that there was no requirement for the Board to find supervisors to be "employees":

They reasoned that the Wagner Act was promulgated primarily due to the conditions existing in the mass production industries and that traditionally the interests of supervisors were more closely allied with those of management.[45]

In yet another reversal, the Board decided in the 1945 Packard Motor Company case that supervisors and foremen could claim the protection of the Act because they did fall within the meaning of the word "employee". The policy was affirmed by the Supreme Court, but it apparently did not coincide with what Congress had intended. In the Taft-Hartley Amendments, supervisors were clearly excluded from collective bargaining, and to help the NLRB, a definition of "supervisor" was provided,[46] but the "onerous burden of applying the definition to a given factual situation fell upon the NLRB."[47] and the Board "has not formalized any rigid rules, but has made its determination on a case-by-case basis."[48]

The Canadian situation has not been as dramatic. Legislation in Canada has generally excluded those who have managerial duties or are party to confidential information,[49] and the various Boards have given a fairly narrow meaning to the terms, at least initially:

> Although it was open to both the Canadian and Ontario Boards to interpret the words "a person employed in a confidential capacity" literally, thus denying collective bargaining rights to employees having access to information of a confidential nature, both Boards chose to give a narrow meaning to the explicit exclusionary rule by excluding from bargaining units only those higher echelon senior and middle managers who very obviously participated in the formulation and implementation of policy and those lower echelon personnel who were actually engaged in discharging duties of a kind which gave them access to confidential information relating to labour-management relations.[50]

Since the U.S. Taft-Hartley Act, Canadian labour relations boards have, in general, when exercising their authority to define "employee", applied similar tests and taken a similar approach to that of the U.S. Board. Each case is examined on its own merits, with no rigid rules regarding inclusion or exclusion followed. More recently, the Canadian and British Columbian legislatures have seen fit to include specific provisions for separate units of supervisors.[51] Such alterations are at least partially in line with the recommendations of the Task Force:

> Employees appropriately excluded on these grounds are effectively denied access to any form of collective bargaining. This is unjust in the case of supervisory and junior managerial employees. We recommend, therefore, that the statutory right of collective bargaining be extended to these employees subject to their being placed in separate bargaining units and in separate unions, and provided further that these unions not be permitted to affiliate with other unions or labour organizations except those composed exclusively of similar types of employees.[52]

The preceding statement by the Task Force raises the issue of the type and extent of association that should now be allowed between standard trade unions and units of lower-level managerial personnel. The recent alterations in the Federal and British Columbia statutes give the Boards the option of creating separate supervisory units or including the supervisors in larger units, but neither Board is really in a position to control the degree of informal association that would exist between the units, even if they were technically separate. The idea of totally separate structures, as recommended by the Task Force, is naturally less offensive to those opposing managerial unionism in total, and also is attractive to many lower-level managers who do not really wish to associate with their "blue-collar brethren". In the industries where they are unionized, the foremen are included in the overall unit. In the printing, construction and railroad industries, ex-craftsmen-turned-foremen are still part of the craft bargaining unit, and the "problems have not proved to be as serious as the anti-union argument would have predicted."[53]

Much of the debate, both before and after the Taft-Hartley Act, though based on the broader theoretical concepts already discussed, was actually primarily centered on the industrial foremen. In addition to organization activity in industries where they were traditionally recognized, such as printing, construction, and maritime activity, foremen's organizations began to appear in mass production industries, in particular the auto industry.[54]

There were several reasons for the spread of interest in collective bargaining to new groups of industrial foremen, and, in combination, these factors were seriously undermining the position of the foreman or supervisor.

Technological change and the use of the assembly line drastically changed the role of the foreman. Robert Leiter outlined this change in role:

> As industrial organization continued to become more complex, the position of the foreman began to weaken. The foreman had been in complete control of his production schedule, but with the growing specialization, division of labour, and departmentalized production, he became more dependent upon other foremen for his materials. Assembly line output makes co-ordination vital. Therefore, over-all supervision to prevent costly delays and unsatisfactory quality was introduced.[55]

Specialized departments, in particular "Personnel", began to usurp much of the authority of the foreman. Such departments used new and complicated techniques, with the result that attempts to involve the foreman in the newer processes usually failed because of his inability to grasp the techniques.

The growing influence of the union movement also affected the position of the foreman. The collective agreement provided more restrictions on the arbitrary authority of the foreman, as well as adding to his work load by requiring him to be the "grass roots" contract administrator. The foreman also lost a certain measure of authority to the shop steward to whom the union members looked when they had a problem.[56]

A subtle change also took place in the nature of the level of management just above that of foreman. Members of that group were there not because they had worked their way up "through the ranks", but because they had some much-needed technical expertise. Since foremen by-and-large did not have such skills, the paths of promotion were increasingly blocked. This was a decisive factor in the eyes of many foremen who regarded their position largely as a stepping stone to more lucrative positions.

The extent to which these factors affected any single foreman depended largely on the situation in a particular establishment, but the overall effect was to inject a new element of insecurity and frustration into the position of "foreman".[57] Unionization was a logical response to this new threat.[58]

Management countered the growing movement of unionized foremen by arguing before the NLRB that the foreman was a key man in the company management team. He could still take major personnel actions and was still responsible for production. He was at the vital first step in the grievance procedure and could, and did, solve many problems at this early stage. If the foreman were to join a union, either one of his own or a separate section of a production workers' union, he would be unable to do his job properly; he would be in a severe conflict of interest situation. Foremen would favour their union brothers and, because of this, management would no longer be able to trust the foremen. Management could no longer be assured that the foreman's interest parallelled that of the company and, as a consequence, foremen would be given less and less authority and smaller and smaller amounts of confidential information. The function of "foreman" would literally disappear. In addition, the involvement of managerial personnel in the union movement would harm the institution itself. The skills such people used in their everyday work would soon allow them to dominate the labour movement. If this did not happen, their more conservative outlook would still clash with the philosophy of other union members. The internal discord could do little to help the overall labour movement.

Besides arguing that organization of foremen was dangerous, management also argued that it was unnecessary. They felt that foremen did not want to organize but were being coerced into doing so by unionized production workers, that management was taking steps to refurbish the financial position of foremen, and that the doors were still open for promotion for foremen who deserved it.[59]

The labour movement argued that what the foreman was in the eyes of management and what he actually was were two completely different things. In reality the foreman was little more than an errand boy. He was not always supported in his decisions by higher level management, and could make few, if any, personnel decisions. He could handle only very routine grievance matters on his own initiative; anything more complex was always referred to a higher authority. He was not involved in any policy formation activities, industrial relations or otherwise, but instead merely followed orders like any other employee in the plant. The unions also argued that foremen and supervisors had been unionized in the railroad, construction and printing industries without any disastrous consequences. There was no factual evidence to suggest that a similar structure in mass production industries would cause any particular difficulties.[60]

Whether public policy excludes managerial and supervisory employees from the protection afforded under a labour act, as it has in the past in Canada, or whether it provides for such protection for certain parts of the managerial group as it now does in British Columbian and Federal jurisdiction, is really of little significance to the labour boards involved. In either case the boards must still decide who is employed in a managerial capacity and who is party to confidential information since both groups are still excluded by the Acts.[61] The discretion to make these decisions and to develop criteria to assist in making the decision has been left with the labour relations boards for a very good reason. Mark Cosman explained the need for such discretion as follows:

> To understand why the legislatures have left the discretion to determine who is part of management for the purposes of certification to the Labour Relations Boards one must examine the structure of modern industry. Modern organizations are now too complex to lay down a set list of rules which will cover all situations. There is no longer a sharp dichotomy between employer and employee. Instead, one usually finds a long chain of authority in which the many managerial tasks are divided among a great many people. Such tasks include hiring and firing, evaluating and promoting, organizing jobs, participating in collective bargaining or in administation of the agreement, or making general policy decisions which can affect any one of these. In most organizations, some people will exercise one or two of these functions extensively, others only occasionally, and still others not at all. The degree of influence by different persons in any one such area can vary widely. Accordingly, in any dispute which arises the Board must weigh all of the factors before making a final determination of the appropriate bargaining unit.[62]

Since a labour relations board may exclude an individual from a bargaining unit because he exercises managerial functions, or because he is employed in a confidential capacity in matters relating to labour relations,[63] two distinct sets of criteria have developed for deciding these often separate questions. The question of managerial functions will be examined first.

Although similar criteria have been used by labour relations boards in determining the managerial status of an individual,[64] there is little consensus regarding just how these criteria may be conveniently grouped. E.V. Wahn[65] recognized two groups of criteria used by the NLRB, those used in the alignment of interest test and those used to establish involvement in the formulation and implementation of policy. In Canada he perceived an evolvement from a reliance on hiring and firing and effective supervision and control to what are now termed the dual tests of supervision and control and management per se. M. Cosman sees two groups of managerial exclusion criteria: those used to establish supervision and control, and those used to establish the degree of independent discretion. In her Task Force Study, Mrs. Bairstow makes no attempt to group the criteria, a practise similar to that of J. Sack and M. Levinson. I think much can be overlooked by using the latter approach. There have been shifts in the weight given to certain criteria because of the new complex structures facing labour boards. Viewing the criteria en masse makes it difficult to notice some of these movements.

The factors examined in each situation may, I think, be conveniently grouped on the basis of the individual's relationship with his employer, his relationship with other employees, and the distinguishing characteristics of his own position.

(i) The Relationships with other Employees

If an individual is in a position whereby he has a material influence on the conditions of employment of fellow employees, then he would be placed in an extremely difficult position if he were in the same bargaining unit as those fellow employees.

The effective authority to hire and fire people is the predominant criterion used in determining a supervisor's relationship with his fellow employees. If a person has this authority, and uses it,[66] then, regardless of his relationship with his fellow employees,[67] he is in a real or potential conflict of interest position. The authority to effectively recommend such action is also enough to place the supervisor in such a position. Consideration of the potential to affect conditions of employment also extends to less drastic changes. Authority to suspend, promote, demote, or transfer people is relevant, as is the power to grant leaves of absence or change the wage rates of fellow employees. Boards also like to know whether a person evaluates the performance of those under him[68] (formally or otherwise) and whether he has the authority to decide who performs what task, and whether this extends to dictating when and how the job is to be done.[69]

Much attention is also given to how a manager's supposed authority relates to his fellow employees in general. If he has considerable authority but only in relation to equipment, for example,[70] then he is not, by virtue of this authority, in a conflict with his fellow employees. If the authority is only exercised for short periods of time or in a seasonal industry, it is also unlikely to create a serious conflict.[71] Community of interest factors may also indicate much in common between a "manager" and those he "manages" regardless of his authority.[72]

(ii) The Relationship with the Employer

The term manager in itself implies a certain control or

> authority. That he had no subordinates does not imply that he had not certain control and authority in respect to Chinese business.[73]

The above statement raises the possibility that an individual's relationship with his employer may be such that, regardless of his position in relation to other employees, he is properly included in the managerial group.

The extent to which a person is actually involved in the planning process or formation of policy is a crucial factor in his relationship with his employer. If attendance at meetings where industrial relations policy is formulated is a normal part of his job, then the individual holding the job can hardly be included in a bargaining unit. Attendance at actual bargaining sessions on behalf of the employer is also commonly ruled a managerial function.

The amount of independent discretion granted to a "manager" is also important. If the employer has delegated the authority to commit the company to certain actions or costs without prior consultation, those with this authority are likely managerial. Sack and Levinson noted the use of this test by the Ontario Board:

> A more frequently articulated test, and one often used in conjunction with the supervision and control test, is whether the person concerned has the power to make binding policy decisions involving the exercise of independent judgement and discretion, or whether, on the other hand, he merely implements the decisions of others, his discretion being confined to routine, limited, predetermined areas. Such independent discretion may involve budgeting, buying, selling, or any of the other myriad aspects of managerial decision-making.[74]
>
> Unless a person who regularly performs work similar to persons in a bargaining unit has independent discretionary powers rather than merely incidental reporting functions which are subject to the discretion and authority of higher persons in management, there is no reason to exclude such a person from collective bargaining.[75]

(iii) Characteristics of the Position

The extent to which the "trappings" of a managerial position distinguish it from other company positions is important because it will influence the degree to which labour boards view the position as "management".[76] If a person is paid more, or paid differently, enjoys special privileges (different hours of work, private office space) and does not actually perform the work of those he supervises, then his position may be more clearly distinguished.

The primary consideration in assessing the distinguishing characteristics of the position is whether the person filling it performs duties similar to those he supervises.[77] The "distance" that might be expected to exist between manager and employee is not likely to exist if a person works with those he supervises. Such proximity may produce a community of interest that outweighs other considerations.

The conditions associated with a particular position are often compared with those attached to similar positions in the industry.[78] If the position does not have the benefits associated with similarly titled positions, the individual will not be excluded just because the "title" appears to warrant it. There must be a clear and logical relationship between the job title and the benefits and duties associated with it.

Labour relations boards give consideration, to some extent, to all the criteria listed in these three categories, but it is the total picture that is sought and rarely is controlling weight given to any particular factor. The overall functions and position of the subject will determine the final outcome in most cases.[79] As with other criteria, the weight given to each component varies with the situation at hand, the labour boards being careful to preserve the flexibility they feel they need to properly handle each case.

It is also possible for a labour relations board to deny someone access to collective bargaining because of the confidentiality of the information they possess. This information, however, must be related to industrial relations matters, and it must be of sufficient import that its release would seriously damage the collective bargaining interests of the employer.[80] It is also necessary to fulfill the statutory requirement that a person be employed in a confidential capacity in matters relating to labour relations. It is possible, and even likely, that many people, while performing unrelated duties, may become party to confidential information, but if they are not specifically employed to handle such information they will not be denied bargaining rights.[81] The Ontario Board recently reiterated its application of this principle:

> The important test is whether there is consistent exposure to confidential information on matters relating to labour relations so as to constitute such exposure an integral part of the employee's service to the employer's enterprise.[82]

The question of confidentiality is closely related to the managerial exclusion, and in many cases the degree of confidentiality of a position may have great bearing, particularly if the decision is a "close" one. But the question of confidentiality is important in and of itself because of the possibility that those excluded "may very well be in rather humble positions where there are no such compensating rewards."[83] Those in managerial positions receive rewards that may offset their inability to engage in collective bargaining (at least with statutorial support). Many who might be excluded because of confidentiality do not have such rewards. Clerks and secretaries may suffer a much greater loss because they do not have union representation. For this reason labour relations boards apply a rather narrow interpretation of the statute;[84] even possible confidentiality because of a familial relationship is not sufficient to gain exclusion, as this statement by the Ontario Board indicates:

> The statute says nothing about persons who may experience conflicts of interest because of a familial relationship with a manager and thus the Board has held that such a relationship in and of itself is an insufficient basis for the exclusion of an individual.[85]

Two factors have combined to make the managerial and confidential exclusions questions particularly difficult in recent years. Organizations are getting bigger and more complex, making it harder to pinpoint the actual areas or positions where managerial authority is regularly exercised, and professionals and white-collar workers have become active participants in the field of industrial relations forcing labour relations boards to consider the managerial question in areas where the distinctions are rarely as clear and precise as they were in the blue-collar/white-collar industrial environment in which the debate originally occurred.

Even the industrial setting is no longer as amenable to clear-cut situations as it was during the great debate over the status of foremen. The difficulties are illustrated quite well by three cases from recent experience: the Yarrows Limited case in British Columbia, and the Chrysler Canada Limited and McIntyre Porcupine Mines Limited cases in Ontario.

In the Yarrows[86] case, the Association of Commercial and Technical Employees sought certification for a unit of "superintendents, supervisors, and foremen." The Board had to ascertain whether those in the proposed unit were managerial (which was the position of the employer), or merely supervisory, in which case they could be placed in their own bargaining unit. The applicant pointed out that those in the proposed unit did not hire and fire and only supervised specific job assignments. They had no input into policy-type decisions and were in fact closely watched by management personnel. They had no independent purchasing authority and were not involved in the grievance procedure. Through its own investigation the Board found that the situation was not as simple as the applicant portrayed it, and that the job titles were misleading.

The "assistant superintendents" did not really supervise anyone, and they rarely hired anyone and never discharged any personnel. They had only a "peripheral involvement" in collective bargaining and exercised no real control over the conditions of employment of those they "guided".

On the other hand, the more humbly titled "foremen" were clearly "an arm of management". They had control over the employment conditions of some one hundred people each. They had the authority to hire and fire and regularly used it. Permission to work overtime had to be obtained from them, and it was the foreman who decided who did the "dirty work" and the "dangerous" jobs, both having higher rates of pay attached. The foremen even travelled occasionally in order to inspect ships that were scheduled for future repairs in the Yarrows facility. The Board created a unit of "supervisory and related personnel" and noted that foremen were definitely not part of the unit. The applicant appealed the decision on the grounds that, if construction foremen could be included in bargaining units, then the same should apply to shipyard foremen. The appeal was dismissed with the following comment:

> The Yarrows foremen do not match those foremen in the

> construction industry who are all members of the various unions. The Board members are all well aware, through Board hearings and their own experience outside the Board, of the many types of foremen and how they vary from industry to industry, and even from plant to plant.[87]

In the McIntyre Porcupine Mines Limited[88] case before the Ontario Board, the applicant sought a unit of "all employees at Schumacher, Ontario designated as shift bosses and foremen, save and except captains and persons of equal or higher rank, office and technical employees, and employees covered by the subsisting collective agreement." The shift bosses and foremen were already excluded from existing plant and office units, and the applicant thus based the request on the altered nature of the industrial environment. The Board summarized the argument as follows:

> In effect, the applicant is arguing that with the metamorphosis of managerial decision-making since 1949 (if only because of the applicant's existing agreement) and the involved jurisprudence of this Board, the status of these people is now in doubt.[89]

The company operated in three divisions, one each for the mine, the plant, and the mill. The shift bosses and foremen were the first line of authority in each division. They were responsible for units of twenty to twenty-two people, the group being divided into seven or eight member units headed by a sub-foreman who clearly belonged in the bargaining unit. After a year-long investigation (resulting in a 605-page, 4-volume report) the Board noted the following characteristics of those functions in question:

a) These people operated in a highly regulated environment. The Mining Act of Ontario "imposes numerous requirements upon both the respondent and the employees. . . ."[90] Health and safety requirements are strictly enforced and these foremen and shift bosses play a major role in such enforcement.

b) The huge size of the company means that "policies and plans are worked out long in advance of actual implementation . . ."[91] and c) the operative collective agreement covers everything from hiring and firing conditions to overtime stipulations, and the industrial relations department administers the agreement, which further decreases any authority of lower-level management.

> Therefore, because of all these factors, it is important to understand that the shift bosses and foremen operate in a very structured work environment and this structure of course has a great impact upon the degree of independent decision making they engage in.[92]

Before making its decision, the Board made a few comments that reflect the difficulties now being encountered in the industrial setting:

> With the rapid advance of technology and the use of more sophisticated management tools, an ever-increasing number of persons are becoming actively involved, in varying degrees, in all aspects of improving public relations, efficiency, productivity, and in controlling the cost of production. As more persons become involved in these matters, it becomes increasingly difficult to distinguish between persons who exercise managerial functions within the meaning of section 1(3)(b) of the Act and employees.[93]

This greater complexity has produced individuals who are what the Board calls "co-ordinators"; they do not make the final decisions in personnel matters, but they are party to the planning process and do enjoy managerial privileges. In questions regarding these people, the role of the "personnel" decision has changed, and the Ontario Board was aware of the change:

> . . . over a series of cases dealing with front-line supervisors this change in emphasis has evolved into the concept of "effective recommendation"--a change which we believe is in response to the metamorphosis that industrial relations has undergone. This concept has come to mean that if a person spends most of his time supervising the work of others and makes effective recommendations that materially affect the conditions of employment of those supervised, the Board may conclude that such persons are exercising managerial functions. In this sense, an effective recommendation

> is a serious recommendation that the evidence demonstrates is usually acted upon and therefore a recommendation that materially affects the economic lives of employees.[94]

The Ontario Board decided that the shift bosses and foremen performed duties primarily managerial in nature, and should therefore be excluded from either of the existing bargaining units.[95] There were several factors that weighed heavily in the decision. The foremen and fire bosses could discipline during a shift, grant overtime and short leaves of absence, schedule vacations, and effectively recommend promotions and the retention of probationary employees. They could move people from one job to another and in doing so affect the wage rates of these people. These people also had some of the "trappings" of management: they were paid a salary and were exempt from security checks.

But one factor was decisive in this case: "these people are literally the only supervisory contact with the employees."[96] In the day-to-day work routine the foremen and shift bosses were the only representatives of company management to come in contact with the regular employees, and for this reason the regular employees regarded them as "management". The gulf that such a perspective created clearly meant that there was little community of interest between the foremen and the production workers, and this factor out-weighed those conditions restricting the authority of the foremen.

In the case of Chrysler Canada Limited,[97] the Board was also faced with a question of the status of plant foremen. In this case the Board established that the foremen did exercise some control over the employment conditions of those they supervised, but the problem was whether this control, given the size and complexity of the employer's administrative structure, was really enough to warrant exclusion. In keeping with the McIntyre decision, the Board excluded the foremen because they had the authority to recommend the retention of probationary employees, and were involved in the grievance procedure. They could also enforce discipline and grant leaves of absence. The case did not have the one controlling factor that over-shadowed the McIntyre case, and perhaps, because of this, produced a spirited dissent from Board member O'Keeffe:

> In the pecking order of the organizational chart of the Chrysler Canada Limited conglomerate, the plant foremen are very much removed from the public image of the dynamic, highly-rewarded industry captain, mover and shaker of the managerial class. The clear fact emerging from a thorough study of the evidence in this case is that the foreman has long since been relegated from king of the plant to that of a very much controlled lead hand, so low down in the totem pole of the organizational chart that is it any wonder that they are here in this application seeking protection for themselves within a union of their choice? . . . It escapes me why we would not now reflect the new peculiarities of the evolving plant bargaining units by having a second hard look at the foreman classification in the plants.[98]

The predominant theme emerging from the pattern set in these and similar cases is the crucial importance of the relationship between the supervisor in question and those he supervises. The relationship with the employer and the "frills" attached to the position are considered, but of paramount importance is the relationship between the supervisor and those he allegedly has control over.

> Do the shift bosses and foremen subject to this application exercise duties and responsibilities that materially affect employees to such an extent that if they were found to be employees they would be faced with a potential and significant conflict of interest?[99]

The increase in union activity in the white-collar sector, particularly in larger private firms and government institutions, has provided a further challenge to labour relations boards.[100] The division of the traditional management functions into specialized departments has limited to a large degree the amount of authority incapsulated in any one position.

In the Corporation of the District of Burnaby[101] case, the BCLRB faced the question of whether or not to exclude fifteen people from a bargaining unit on the grounds that they performed managerial functions. In considering the case the Board postulated that in such large, bureaucratic, white-collar institutions there may well be three categories of "managers":

a) Supervisors--these individuals are involved in the immediate supervision of people;[102]

b) Managers--who are responsible for the overall operation of a large segment of the institution; and

c) Executives--these people are concerned largely with long-term policy decisions and are not overly involved in the day-to-day operations of the firm or institution.

The Board followed the pattern identified in the industrial context by looking for those people who had a real effect on the conditions of employment of employees. The division "managers" possessed such authority. They and those above them were excluded for this reason.[103] The Board emphasized the importance of this criterion by pointing out that the fifteenth subject exercised considerable authority regarding the investment of surplus funds, but that such activity was not managerial because "none of these activities involves the exercise of management functions over other employees."[104]

In the Globe and Mail Limited case,[105] the Ontario Board also encountered the problem of the relative importance of the manager/

employee relationship. The applicant argued that the "district sales representative" was no longer responsible "for the selection, training and supervision"[106] of paper carriers, and thus could no longer be considered managerial. He did not exercise such functions in relation to employees, and thus was not in a real or potential conflict of interest situation. (In support of the case, the applicant referred the Board to the McIntyre case.) The Board examined the case with the intent of establishing whether the sales representative was in such a conflict situation, and the task was not easy, as the Board so cogently pointed out:

> Recently the Board reviewed the dilemma of discerning the area of managerial decision-making by observing that in the qualitative sense, the measuring of managerial authority of the first line supervisor over employees for whom responsibility has been delegated is a relatively simpler task than measuring the contributions of individuals in the policy-making processes of a large bureaucratic undertaking. In the former instance, the indices of hiring, firing, promoting, demoting, recommendation of pay increases, etc., etc., etc., are relatively susceptible to discernment. On the other hand, perceiving the locus of decision-making authority in formulating policy having regard to the sophisticated process of analysis and research adopted by those same enterprises with respect to the determinations affected by the first-line supervisors, is a more difficult task. Consequently, the more removed the policy-making functions are shown to be from actually affecting bargaining unit employees, the more difficult is the task of drawing the precise lines of conflict that may arise. In such instances the case for managerial exclusion may very well fall short of being justified.[107]

In this particular instance the case did fall short and the sales representatives were granted their own province-wide bargaining unit. The increasing role of the importance of the position's relationship to the regular employees is reflected in both the white-collar and industrial sectors. To be a "manager" for industrial relations purposes it is now not sufficient to merely exercise some degree of authority; that authority must be exercised in such a way as to create a conflict of interest situation:

> There is no question in our view that "the conflict theory" forms the predominant rationale justifying the deprivation of persons who are otherwise employees, but for their responsibilities as managers of the benefits of collective bargaining.[108]

The peculiar position and attributes of professional employees added yet another dimension to the managerial exclusion question. In the Toronto East General Orthopaedic Hospital Inc. case, the Ontario Board had to decide on the status of assistant head nurses, and in making the decision the Board found that the position of the professional incorporated some subtle, but important, differences:

> Professional or semi-professional employees such as head nurses and nurses have a different relationship with management in matters falling within their professional competence, and the performance of their professional duties than employees engaged in production in other industries. While the criteria applied to determine whether professional or semi-professional persons exercise managerial functions are basically the same as with persons concerned with production, in applying such criteria a distinction must be made between functions which are of a managerial nature and functions which are inherent in the exercise of such person's professional or technical skills. While nurses may give certain directions to others (e.g., orderlies) in the exercise of their professional skills, these directions are not dissimilar to the directions given by a journeyman to an apprentice in other crafts.[109]

In making a decision in the Toronto East General case, the Ontario Board delineated three characteristics of the white-collar sector, with its growing proportion of professionals, that preclude treating the sector the same as others in the economy:

a) the growth in the sector has increased the number of "conduit" functions and "reporting" functions, but decreased the number of real managerial functions. Though many professionals work with and may be identified with management by a casual observer, they are, in fact, highly specialized gatherers of data. They provide "decisions information", but do not make the decision.

b) Professional workers need very little supervision and might even react unfavourably to too much interference from above. This tendency will have a profound effect on the degree of actual supervision a "manager" can or does engage in when he is overseeing a group of professionals. It is unlikely he will be supervising in the blue-collar industrial sense.[110]

c) The monolithic, treat-them-all-the-same style of supervision just does not work in this sector. There must be more give and take, particularly when dealing with professionals; a more collegial atmosphere must prevail. Even if authority is exercised by an individual, it may not be as easily recognized as it was and may still be in the industrial sector.[111]

This diffusion and more subtle use of authority is nowhere better illustrated than in the university or college situation. In the Vancouver City College case,[112] the British Columbia Board was required to rule on the status of "Division Chairman". Each chairman was drawn from the ranks of the faculty, who played a major role in the selection. Each was paid his normal faculty salary with an increment to recognize the extra duties of his position. Each chairman continued to teach, but spent much of his time in administrative activity. At the end of his term, each chairman returned to the ranks of the faculty. The chairman handled the scheduling duties for the department, as well as advising individual faculty members and in general "suggesting and facilitating changes."[113]

The Board made the decision to include the chairmen in the bargaining unit on the basis of the traditional authority structure at the university. The tradition was that, given the professional stature of the employees, decisions were really made on the basis of an interchange among colleagues rather than any imposed authority from above. Though the Division Chairmen may have had considerable influence in the department, it is unlikely that they could or did exercise any "blue-collar" authority.

The primary advisory role that many professionals fill calls into question the validity of the "effectively recommend" criterion used by the Ontario Board in the McIntyre case. Large numbers of professionals in an organization may make numerous recommendations, and these may be acted upon because of the expertise of those making them, but is such an action grounds for a managerial exclusion? In the British Columbia Telephone Company case[114] the BCLRB confronted this issue, and decided that such actions were not really managerial:

> The fact that recommendations are generally effective does not mean that the focus of the decision-making process has been displaced. It is a reflection of the fact that the author of the recommendation does a good job and it might have much to do with whether or not he is likely to ever become a decision-maker, but it does not change the nature of his job, which is essentially that of a subordinate, however highly skilled . . . . However, this need to convince, to persuade, to seek another's consent, is not the attribute of a manager, it lies at the very heart of the concept of subordination. This is typically the case whenever a person is given the power to "make recommendations" and this is why a recommendation, even an effective recommendation, is not a decision.[115]

It is noteworthy that at the time of the great debate over the status of foremen only minimal concern was directed toward the question of identifying the foremen. In the thirty years since, that has developed into precisely the problem. The spread of collective bargaining has forced labour boards to develop decision criteria related to specific managerial functions, and to exercise considerable insight in determining just who is a vital component of the employer's "team", and who does little in helping the employer maintain the essential balance of power.

THE STATUS OF PROFESSIONAL PERSONNEL

A problem similar to that of craft units, but one with a greater potential for future difficulty, is that of the bargaining unit status of the professional employee. The potential is greater because of the tremendous growth in the number of professionals employed in the economy,[116] the recent increase in the organizing activity surrounding such professionals, and the greater complexity of the whole question.

The appearance of professionals on the collective bargaining scene is very closely related to the difficulties encountered in matching the professional to his new role as a member of a large organization,[117] a role outlined by L.W.C.S. Barnes:

> Nevertheless, I believe that we can all accept the pragmatic view that whatever the public belief may be, in reality the typical professional in this year of grace, 1975, is unlikely to be a doctor in his office, a lawyer in his chambers or a parson in his pulpit. He is much more likely to be either one of twenty chemists in a quality control laboratory or one of five hundred meteorologists in a federal government department, or, perhaps, one of a thousand engineers in an aerospace plant. He is no longer, in fact, a self-employed practitioner of a calling for which he has received appropriate training and license, but is an employee utilizing his education and skills and carrying his responsibilities, but nevertheless, an employee, with a salary scale, a leave schedule, an attendance register and, often a very uncomfortable feeling about his role and his future in the overall pattern of things.[118]

The frustrations encountered by professionals in trying to reconcile their self image and preconceived notions of professional integrity and freedom with the demands inherent in being a member of a large organization have created an interest in group action extending beyond that normally undertaken by professional associations. The large organizations produce an impersonal work environment. The complicated authority structures and "proper channels" make it hard for individuals or loosely-organized groups to make their feelings known to those who may do something about the problem. The only alternative is a more tightly organized, more militant approach. (This method caught the attention of employers for many other groups in the economy, and likely will do so for professionals.)

There is also a solid financial reason for the growing interest of professionals in collective bargaining. In her Task Force Support Study, Shirley B. Goldenberg[119] accounted for the growing unrest among professionals by pointing out the deteriorating financial status of the professional worker. The plentiful supply of professionals in some areas has effectively eliminated the option of improving one's position by merely moving to the highest bidder.[120] In many cases, organizations have rather uniform salary scales; the utility of switching from one to the other, even if it were possible, is simply not that great. There are also salary differences between professionals on the "outside" and those working in the organization. (The only alternative to flooding the "outside" market is to raise the salary levels of those employed by organizations.) Perhaps the most influential financial factor has been the disparity between increases in professional salary levels and those increases gained by less-educated, blue-collar workers. Through their collective bargaining activity many blue-collar workers have held their own against inflation, while many professional groups have steadily lost ground (e.g., university professors). The professional has even lost ground to less-educated personnel in his own field.[121]

Professional organization may also be spurred by a desire among professionals to have a greater input into the policy decisions that ultimately affect them. This desire may be based on the premise that since less-educated groups have an input into decision-making processes the professional should also have one,[122] or it may be based on the belief that if professionals are to be held responsible for certain outcomes, they must also have a role in producing the policy restrictions that they must operate under.[123] By having this role in policy formation, professional groups would also be better able to protect themselves against encroachment on their professional standards by the large organization. Unless professionals are there to make their views known, consideration for their ethics or standards may give way to the needs of the overall organization.

The appearance of professionals on the collective bargaining scene has caused problems for labour relations boards, in a unit determination context, in two ways. Professionals occupy a particularly difficult "grey area" in the problem of managerial exclusions. Since those occupying managerial positions are excluded from bargaining, the question of drawing the line between managerial and non-managerial professional personnel is vital to the future of professional organization.[124]

Labour relations boards must also deal with the problem of deciding what is and what is not a profession. The Boards receive only a back-handed sort of guidance from their legislation. The word "profession" appears in all three of the Acts, but no definition is supplied.[125] However, by excluding specific professions, and by granting others their own statutes,[126] the legislatures have provided examples of what was intended by the word "profession". However, the granting of statutes to groups not clearly professionals (e.g., Dental

Technicians in Alberta), or the deletion of exclusions from the statutes (the deletion of Section (1)(1)(iii) from the British Columbia Labour Code), have served to confuse the issue to the point where looking to the local statutes is of little help to labour boards. A definition incorporated into a statute may be found in the Taft-Hartley Act in the United States. The section reads in part:

> The term "professional employee" means:
> a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgement in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. . . .[127]

The presence of words like "predominantly", "consistent", and "prolonged" decreased considerably the usefulness of this definition to the NLRB or any other board seeking guidance in this area. The board is still left with the task of deciding what meaning these words will bear--how long is a "prolonged" period of time?--the line must be drawn somewhere. The growing number of groups attempting to qualify as professions has forced labour relations boards to formulate criteria, much as they had to do in questions regarding crafts, for use in deciding what constitutes a real profession. M.L. Cogan points out the difficulty in formulating a workable definition of "profession":

> Some observers of profession, having made a demonstrably adequate search of the relevant literature, flatly deny the possibility of formulating a satisfactory definition of profession. It appears to them that the idea is too amorphous to be circumscribed. Still others admit that they perceive a structure or a form, but shy away from the complexities they encounter when faced with the necessity of discriminating among the hosts of vocations claiming the title.[128]

Labour boards do not have the option of "shying away from the complexities"; they must develop a workable definition. The task is not an easy one as evidenced by this comment by the BCLRB:

> We are into an area where technology is advancing with greater speed at times than our vocabularies and understanding. New words and job classifications are being created--to give a definition now that will cover all future contests is impossible. To be quite honest, the crystal ball clouds at certain points.[129]

In this particular case, the British Columbia Board was being asked to provide guidelines that would in future help delineate the boundaries of the para-medical unit in the health care industry. The Board was being asked, in effect, to specify the criteria that would decide whether any given occupation would be treated as a profession or not. The Board obviously did not feel it was in a position to provide such hard and fast guidelines.[130] The difficulty in providing such guidelines is enhanced by the fact that the "professions", as a group, are not a monolithic group, but are instead one made up of several classes or components. Shirley Goldenberg postulated three such classes of professionals:

a) A group having both academic specialization and a tightly-knit formal organization. Doctors, dentists, and lawyers would fall into this category;

b) a group that has a strong formal organization, but not the academic specialization and training of a group like the doctors. Teachers and nurses would make up much of this class; and

c) a group that has a high level of academic specialization, but no real formal organization. Economists and physicists would fall into this last category.[131]

Although the professional group is more a mosaic than a monolith, there are several common threads that may be used as criteria for separating the imposters from the real thing. M.L. Cogan identified two of these elements in his personal definition of a profession:

> A profession is a vocation whose practise is founded upon an understanding of the theoretical structure of some department of learning or science, and upon the abilities accompanying such understanding. This understanding and these abilities are applied to the vital practical affairs of men. The practises of the profession are modified by knowledge of a generalized nature and by the accumulated wisdom and experience of mankind, which serve to correct the errors of specialism. The profession, serving the vital needs of man, considers its first ethical imperative to be altruistic service to the client.[132]

The true profession is characterized firstly, then, by a body of abstract knowledge. William J. Goode[133] pointed out that this knowledge should be well organized and codified, it should be applicable to practical problems faced by men, and both the professionals themselves and society in general must believe that the application of this body of knowledge does indeed solve the problem. The body of knowledge must be unique enough in order for society to recognize that certain problems must be handled by the men who possess such skills, and nobody else. The profession as a group should be involved in creating, transmitting, and organizing this body of knowledge. The difficulty of acquiring the knowledge must "be great enough that the members of the society view the profession as possessing a kind of mystery that it is not given to the ordinary man to acquire, by his own efforts, or even with help."[134]

A second key to the definition of a professional is in the relationship between the professional and the users of his services, the nature of which was outlined by W.J. Goode:

> The ideal of service, sometimes called a collective orientation, may be defined in this context as the norm that the technical solutions which the professional arrives at should be based on the

> client's needs, not necessarily the best material interest or needs of the professional himself or, for that matter, those of the society.[135]

In order to properly serve his client the true professional must need to gain a certain amount of highly confidential or personal information from his client. The intimate details of health problems that a doctor must have in order to act, or the deeply personal revelations a priest or minister may need in order to properly counsel an individual are examples of such a relationship. After such information is obtained, it must be the professional alone who decides on the proper solution, without any suggestions or input from the client. The practise of the profession must also demand a real personal sacrifice. Long years of training, long hours of work after reaching the professional standard, and the likelihood that in the meeting of his professional ideals the individual will encounter some opposition from certain sectors of society, help to solidify the impression of a highly altruistic professional ideal. It must also be clear that the professionals who live by their ideals are those who are most successful; if a member of a professional group succeeds among his peers without adopting their value system, then the legitimacy of the profession becomes questionable. (An individual holding office in a Bar Association, for example, must have an absolutely sterling professional record, anything less would damage the public's image of the professional ethics of lawyers.)[136]

The existence and role of a professional association is also of assistance. Professions acknowledged as authentic often have an association to represent their interests. The association is involved in the selecting and educating of new members. It lays down and enforces the code of professional ethics approved by its members. It promotes communication and information exchange among its members and, in most cases, works very hard at pointing out the "distinction between the members and the rest of society."[137] The existence of a well-organized, professional association supported by specific legislative provisions provides a group with a distinct identity and a society-sanctioned legitimacy, both of which support its claim to special treatment.

The key to the definitional problem associated with professionals will likely ultimately be found, I believe, in the ideals of service associated with the work and the kind of relationship that must exist between practitioner and client. Knowledge and its possession is not, it appears, destined to remain a major consideration in professional exclusion cases, as indicated by this comment by the CLRB:

> Basically, the community of interest which might exist among the persons whom the applicant proposes to encompass in an appropriate bargaining unit, which might make them distinguishable from persons excluded from said bargaining unit would be based solely on personal qualifications and would have little or no basis in the organization of the enterprise.[138]

The existence of a professional association is also no longer all that is needed to gain separate representation. Once a certain portion of the so-called professional work force is represented by associations, the representation ceases to be a useful criterion. This situation was encountered by the OLRB:

> We are of the opinion that all of the occupations have made sufficiently significant progress along this path of professionalization that no one occupation or a group of occupations can claim a unique or distinct community of interest in this regard, at least for the purposes of the Labour Relations Act, 1973.[139]

The use of the Association as a unit determination criterion may also create other difficulties. The logical unit, given the weight attached to the existence of the association, may be impossible to create, as

Adell and Carter illustrate:

> In some respects--and this may also have been true before the 1960's--physicists at the university in British Columbia may have a greater community of interest with physicists in New Brunswick than with economists in British Columbia. It might be argued that an attempt should therefore be made to set up a nation-wide bargaining unit of physics professors forgetting for the moment the legal technicality that both education and labour relations in education are constitutionally within provincial jurisdiction.[140]

The use of the client-practitioner relationship and the actual service orientation of the occupation might allow labour boards to severely limit the number of groups attaining professional status, which is what the boards desire. The threat of professional units poses the same unit proliferation and bargaining fragmentation problems that exist in the craft situation, and, given the continued expansion of society's technological base, the likelihood of many more new professions seeking new units makes the problem potentially greater than that of craft units. By examining closely the applicant's relationship to society as a whole,[141] or a client in particular, the boards could sort out those "experts who serve the vital needs of mankind"[142] from those who only help others to do so. There would likely evolve a heirarchy of professionals with those ultimately responsible for creating and implementing the specialized knowledge being the only recognized professions, those using only parts of this body of knowledge being lower-level professionals, and non-professionals for labour relations purposes. These groups do not need the freedom required to properly engage in "professional activity" and their potential for doing harm because of their own limited knowledge is not great. To do their job properly, they are not required to, and do not, attain the level of learning or competency that the true professions must attain, because it is only the latter who accept responsibility for the validity of the knowledge. (The classic "I didn't write this stuff, I just perform it" argument is an example of such blame-shifting.)

> Their autonomy is only partial, being secondhand and limited by a dominant profession. This is the irreducible criteria which keeps such occupations para-professions in spite of their success at attaining many of the institutional attributes of professions.[143]

The great advantage of using extent and type of knowledge and extent of professional organization as important criteria is that their use does not force a labour relations board to differentiate between self-employed professionals and those employed by large organizations. Both groups use the same knowledge base, and are part of the same association. The consideration of commitment to a service ideal and relationship with the client does create difficulties in this regard. The extent to which an "organization" professional can commit himself to any service ideal depends on the type of freedom he is given within the organization. The kind of relationship that develops between a professional and his employer (who in an organizational context would be his client) is hardly likely to parallel that of a professional/client relationship in some private practise situation. If it did reach some stage of intimacy, the professional would surely be considered part of management and thus excluded from bargaining anyway.

The search for a definition of and useful criteria for getting hold of the elusive concept of "profession" continues.[144] Since it is "organization" professionals who seek bargaining rights, the search for a definition may end in a recognition of the very different situation faced by the individuals, and the application of criteria more associated with community of interest, than with "professionalism".

Shirley Goldenberg has three alternatives available for dealing with the structural problems of collective bargaining for professionals (assuming that a satisfactory definition could be found).[145] Each profession could receive its own statute, all professions could be placed under a separate piece of legislation, or special provisions could be made in existing legislation. In Alberta and Ontario the major professions are recognized by their own statutes. Whether others may fall under the relevant labour legislation depends on whether an employee/employer relationship without managerial overtones can be proven to exist. In British Columbia the addition of the word "professional" in strategic clauses of the code at the same time as specific exclusion for professionals covered by special statutes was dropped, clearly indicates that the labour legislation is intended to cover professionals. If applicable, they are to receive the same treatment as craft units, including the option of being included in groups with other employees.

Whether present legislative provisions, combined with the fragment-conscious philosophy of labour boards, will serve to control the professional problem is unknown. This particular problem caused considerable difficulty during the period covered by this study, and the rise of the professional, unlike the craft problem, is a new phenomenon that may demand new solutions. The position of the labour boards is steeped in labour relations tradition and the need to maintain stability at the cost of individual freedom. The stance of the professions is not now as clear or as stable, and according to Barnes, it is not likely to stabilize in the near future:

> I further believe that the trend which was established is continuing to accelerate and that the attitudes, demands, and viewpoints of the employed professional at the end of this present decade will bear virtually no resemblance to those of their predecessors of a generation ago. Furthermore, they will differ significantly from their own position even at the beginning of this decade.[146]

FOOTNOTES

Three Major Problems

[1] J.A. Willes, The Craft Bargaining Unit: Ontario and U.S. Labour Board Experience (Kingston, Ontario: Industrial Relations Centre, Queen's University, 1970), p. 1.

[2] Herman, Appropriate Bargaining Unit, p. 54.

[3] Willes, Craft Bargaining Unit, p. 10. More recently, the United States Board has applied the following six-point doctrine in craft severance cases:

a) whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a non-repetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists;

b) the history of collective bargaining of the employees sought at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labour relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation;

c) the extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation, and the prior opportunities, if any, afforded them to obtain separate representation;

d) the history and pattern of collective bargaining in the industry involved;

e) the degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit; and

f) the qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action (Abodeely, Appropriate Bargaining Unit, p. 96, criteria originally set down by the NLRB in the Mallinckrodt Chemical Works case of 1966).

[4] Carrothers, Collective Bargaining Law, ch. 2.

[5] Sack and Levinson, Ontario Board Practise, p. 79.

[6] In assessing the quality of the representation received, the Ontario Labour Relations Board considers whether:

a) the history of representation has been long or short;
b) there is a consecutive chain of collective agreements;
c) such collective agreements make special provisions in the seniority clauses and wage schedules for the craft group;
d) the collective agreements provide for extra wage increases for the craft group;
e) there is a shop steward for the craftsmen;
f) a craftsman, or skilled tradesman, sits on the negotiating committee, the job classification committee, and other committees; and
g) there has been proper presentation of craftsmen's grievances

(Sack and Levinson, Ontario Board Practise, p. 83).

In examining these factors, the Board is not so much concerned with quality in the sense of what the union has obtained for the craftsmen, but more with the status of craftsmen in relation to others in the bargaining unit. The question is more one of equal representation, even if it is poor.

[7] It is also helpful if the craft has been recognized by other legislation or government bodies. For example, under the Apprenticeship Act, the Alberta Apprenticeship Board has the authority to designate a particular trade as one to which the provisions of the Act apply. Such recognition implies a level of organization and permanence, particularly in the training program, that would do much to establish the "craft" status of the occupation.

Boards are generally suspicious of units that are not clearly craft or industrial, the unit configuration appearing to be based more on extent of organization than on the unit philosophy of the applicant, (for example, Operating Engineers v Majestic Wiley Contractors Ltd., and Norman Keglovic Contracting Ltd. [1975], CLLR, 16176).

[8] Weber, Collective Bargaining, p. 4.

[9] The community of interest criteria are rigorously applied in craft cases, with the onus on the applicant to prove that tradition, job function, and all the normal community of interest criteria indicate a clearly separable group. For example, the Canada Labour Relations Board has ruled that personnel involved in the cheque-clearing operations of a bank did not have distinctive enough training or working conditions to warrant separation (Syndicat National des Employes de la Banque Canadienne Nationale v La Banque Canadienne Nationale [1967], CLLR, 16010), but that CBC news gathering personnel in Montreal and Quebec City were a separable unit by virtue of their unique function in relation to other CBC employees, and by virtue of their geographic and cultural separation from the other employees in the nation-wide unit (Syndicat General du Cinema de la Télévison v CBC [1968], CLLR, 16036). The Alberta Board turned down a unit of "technicians, newsmen, writers, clerical workers, announcers and producers" at radio station CKUA on the grounds that they were not distinct enough from other employees of the telephone commission (National Association of Broadcast Employees and Technicians #86 v Alberta Government Telephones, Radio Station CKUA [1970], CLLR 16029).

[10] Law Casebook Group, Labour Relations Law, p. 141.

[11] "In each case, then, the Board must decide whether the distinctive needs of special groupings of employees are strong enough to outweigh the practical arguments in favour of one all-employee bargaining unit" (Insurance Corporation of British Columbia v CUPE Local #1695). The "practical arguments" include administrative efficiency, common framework of employment conditions, and industrial stability, the latter being particularly important in matters involving crown corporations.

[12] Willes, Craft Bargaining Unit, p. 4.

[13] Even a commitment to larger units in the interests of stability may not be the end of the problem. If the larger units create enough disgruntled craftsmen, illegal actions from these groups may create more problems than smaller units would have.

[14] There are, however, elements of practicality in the position of craft unions, as Chamberlain pointed out in his Sourcebook on Labour (p. 432):

"The reverse situation is also possible--that small, special-interest craft groups may come to feel that they would improve their bargaining position by casting their lot with a larger group in a comprehensive unit. This is likely to be true where the importance of the skill involved is diminishing, perhaps by virtue of some technological change which makes that skill less necessary that it once was."

Troubled craft unions may also alter their constitutions and begin to organize on an industrial basis in order to better their chances of long-run survival. Boards must then be cognizant of the implications of the wording changes in the constitution. It must be clear that the union can include, constitutionally, those it seeks to organize (for example, High School Board of Eastview v International Union of Operating Engineers [1967], CLLR).

Board recognition of a craft union's extension of jurisdiction does not always mean the recognition will last. In the Stedelbauer Chevrolet Oldsmobile Ltd. case, the decision of the ABIR to recognize the extension of the jurisdiction of the Sheet Metal Workers to include mechanics was quashed by the courts (Stedelbauer Chevrolet Oldsmobile Ltd. v ABIR [1967], CLLR, 14033).

[15] Industrial unions counter these arguments by claiming that craftsmen use few of their skills anyway, which justifies a leveling off of overall wages and that by clinging to their long and inefficient apprenticeship programs in the face of cheaper, quicker technical school educations, craftsmen have undermined their own apprenticeship programs.

A major Labour Board in Canada that has more or less rejected the arguments put forth by craft unions is the Public Service Staff Relations Board. Jacob Finkelman points out in Rationale in Establishing Bargaining Units that craft arguments based on traditional craft unit structures and the rights of minorities have fallen on deaf ears in the public service.

[16] Willes, Craft Bargaining Unit, p. 5.

[17] Lloyd G. Reynolds sees several ways for an industrial union to recognize the interests of the craftsmen:

a) form a "skilled trades department" that handles the apprenticeship program, may hold its own separate conventions, but does not have any special voice in wage negotiation decisions;
b) allow craftsmen to make up a certain proportion of wage policy or negotiating committees, thus having direct input into vital policy decisions; or
c) give skilled workers the right to veto negotiated wage settlements by granting them the right to strike as a separate group

(Labour Economics and Labour Relations, Englewood Cliffs, New Jersey: Prentice-Hall Inc., 1974 , p. 450).

[18] The job function may disappear altogether, or the function may simply be contracted out if the demands of the craftsmen make it too expensive to do otherwise (Chemcell Ltd. v Plumbers and Pipefitters [1967], ABIR, LR-174-C10).

[19] See Footnote #3 for a list of the criteria now used.

[20] Willes, Craft Bargaining Unit, p. 15.

[21] Ibid., p. 18.

[22] Herman, Appropriate Bargaining Unit, p. 58.

[23] Ibid., p. 65.

[24] Mr. William Gray of the Alberta Board of Industrial Relations stated that if a bona fide trade union proposed a unit that involved a new craft, the Board would certainly consider the proposal, but he added that such proposals are few and far between with only the hospital sector providing any such situations recently, and also that concerns over unit fragmentation are still of great importance (W. Gray, member of the Alberta Board of Industrial Relations, interview held 19 July 1977).

[25] Herman, Appropriate Bargaining Unit, p. 63.

[26] Section 6(2) of the Labour Relations Act reads as follows: "Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from the other employees through a trade union that according to established trade union practise pertains to such skills or crafts shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to such skills or craft, and the Board may include in such unit persons who according to established trade union practise are commonly associated in their work and bargaining with such group, but the Board shall not be required to apply this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

[27] For example, a union seeking a unit of electricians in an industrial setting could not prove bargaining history by referring to its activities in the construction industry.

A very interesting reversal of this issue occurred before the OLRB. Local #183 of the Labourer's Union sought to gain certification for an industrial-type unit in the construction industry. The union sought a unit of all employees involved in concrete forming construction, and argued its case by claiming that the concrete forming function was atypical enough to warrant the special treatment:

". . . the employees worked as a crew exercising a combination of technical skills of more than one craft and each member of the crew is required to perform the work of any other member of the crew. Indeed, the applicant suggested that such terms as carpenters, labourers, rodmen, and cement finishers, were not appropriate in the present case since an individual employee could not be so identified as he was required to perform any or all of the particular jobs on any given day.)

The Board accepted the argument and granted the requested unit, but cautioned the applicant to include all crafts in its unit (Puriche Construction Forming v Labourer's #183 [1974], CLRBR, 231).

[28] Willes, Craft Bargaining Unit, p. 28.

[29] Herman, Appropriate Bargaining Unit, p. 57.

[30] Ibid., p. 64.

[31] For example, the Board rejected an application for a unit of "Office, clerical, and technical personnel, except supervisory personnel, in the Physical Plant and Planning" at Simon Fraser University on the grounds that it would fragment a larger existing unit (Simon Fraser University v Physical Plant and Planning and Office and Technical Employees Union #15, and Association of University and College Employees (Intervenor) [1974], CLRBR).

In recognizing traditional patterns, the British Columbia Board does not appear to necessarily approve of them. In a recent decision two separate crafts were amalgamated, at their request. The Board did so with the following comment:

"Finally, the panel is of the view that there now exists a proliferation of bargaining units within the ambit of the building trades in British Columbia. We are persuaded that a combining and consolidating of certain of these units may well be justified in the light of changing practise and technology, and would be in the interests of enlightened labour relations. The change that we now order is a small beginning" (Construction Labour Relations Association of British Columbia v the British Columbia Provincial Council of Carpenters (27 Locals), and the Wood, Wire and Metal Lathers, Local #207 [1976], CLRBR 260).

[32] Section 41(1) reads: "Where a group of employees belongs to a craft or group exercising technical or professional skills, by reason of which it is distinguishable from the employees as a whole, and the employees are members of one trade-union pertaining to such craft or skills, the trade-union may, subject to the provisions of sections 39 and 40, apply to the Board, and shall be certified as bargaining agent

for the employees in the group, if the group is otherwise an appropriate bargaining unit."

[33] Section 41(2) reads: "A trade-union claiming to have as members in good standing a majority of the employees in a unit in respect of which a craft or professional trade-union is the bargaining agent under this section may make application to the Board to have the unit included in some other unit, and the provisions of sections 39 and 40 apply to the application."

[34] "In other words, the law merely respects tradition" (Woods, Labour Policy and Labour Economics in Canada, p. 103).

[35] "The problem of reconciling the interests of production workers and skilled tradesmen within large industrial unions has again surfaced, especially in the U.A.W. and U.R.W. The skilled groups in the latter union even applied for a separate certification outside the U.R.W.--a move denied by the National Labour Relations. Board. Both unions are endeavoring to work out accommodations with their skilled groups and this could include additional wage adjustments on this year's negotiations to restore skill differentials" (H.D. Woods, The Current Industrial Relations Scene in Canada, Kingston, Ontario: Industrial Relations Centre, Queen's University, 1976 , p. S-U-38).

[36] Canadian Industrial Relations, Task Force, p. 141.

[37] In his Task Force Support Study, Herman points out that any attempt to implement multi-craft bargaining would encounter problems because of the opposition from the stronger crafts, the difficulties in defining the appropriate union and the crafts within it, and the potential interest conflicts in deciding on whether to support single location, multi-plant, or multi-employer, multi-craft units.

[38] "Inter-craft solidarity is a tender flower at best" (John T. Dunlop and Neil W. Chamberlain, ed., Frontiers of Collective Bargaining, quoted in Margaret K. Chandler, Craft Bargaining, New York: Harper & Row, 1967 , p. 69).

[39] Chamberlain, Labour, p. 593. Quote from a statement issued by the President's National Labour-Management Conference, November 5-30, 1945.

Management's right to manage includes freedom to decide what products will be manufactured or what services will be rendered, the location and relocation of all or part of a business, the processes, techniques and methods to be used in providing the product or service, the determination of financial policies including the pricing of goods and the type of internal accounting and reporting used, the size, composition, and duties of the work force, and the setting of quality standards for the employees hired and the products or services producd.

[40] "What is contemplated is an arm's length relationship between the employees represented by a bargaining agent, on the one side, and the employer acting through management on the other side. The Act attempts to create a balance of power between the two sides by insulating one from the other . . . . Collective bargaining rights,

therefore, are not universal, but must be qualified by the need to preserve a countervailing force on the employer side" (Chrysler Canada Limited v Canadian Industrial Automotive Union 1976 , CLRBR 448).

[41] Canadian Industrial Relations, Task Force, p. 138.

[42] The National Labour Relations Act, 1935, sec. 2(2).

[43] Ibid., sec. 2(3).

[44] E.V. Wahn, "Collective Bargaining Rights of Managerial Employees in the United States and Canada." Labour Law Journal (June 1976):344.

[45] Abodeely, Appropriate Bargaining Unit, p. 205.

[46] "The term 'supervisor' means any individual having authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement" (Ibid., p. 207).

[47] Ibid.

[48] Wahn, Bargaining Rights, p. 344.

[49] "Canadian public policy has traditionally been unsympathetic to the idea of supervisory unionization. This lack of sympathy has not gone to the extreme of illegalizing supervisory unionization, supervisory collective bargaining, or even supervisory strikes. Rather, it has taken the milder form of excluding supervisory and managerial employees from the protection of provincial and federal labour codes" (Robert Rogow, "Supervisory Collective Bargaining." quoted in S.M.A. Hameed, Canadian Industrial Relations: A Book of Readings, (Toronto: Butterworth and Co. (Canada) Ltd., 1975, p. 207).

[50] Wahn, Bargaining Rights, p. 349.

[51] Labour Code of British Columbia, sec. 47. Canada Labour Code, sec. 125(4).

[52] Canadian Industrial Relations, Task Force, p. 139.

[53] Rogow, "Supervisory Collective Bargaining." quoted in Hameed, Readings, p. 211. The small number of foremen, and their geographic dispersion may be reasons for their inclusion in the overall craft unit. In industries where numbers were greater and concentration more prevalent, Rogow found that separate unions of foremen were the pattern (e.g., maritime personnel and government operations like the post office).

[54] The Foreman's Association of America was formed 2 November 1941

by a group of foremen working for Ford Motor Company.

[55] Robert David Leiter, The Foreman in Industrial Relations, (New York: AMS Press, 1948), p. 33.

[56] "But whether he was supported by his superiors or not, the foreman suffered an irreparable loss of prestige in the eyes of the workers, as well as loss of authority, when the union obtained a strong foothold in the plant. The foremen was identified with routine production problems, and the workers took their complaints and personnel difficulties to others" (Ibid., p. 36).

The union was also, through its bargaining strength, steadily narrowing the gap between the wage of the foreman and the wage of the production worker, a movement that did not go unnoticed by the foremen.

[57] Robert Rogow points out that each of the following is usually, to some extent, the responsibility of the foreman or supervisor. The importance of each to the particular operation, and the extent to which unionization, technological change, and changes in management affected them was the extent to which the foreman was affected:
a) work flow;
b) work standards;
c) machine control;
d) labour control;
e) cost control; and
f) work methods control.
("Supervisory Collective Bargaining." quoted in Hameed, Readings, ch. 6).

[58] The debate over foremen in particular reached a peak during and just after World War II. Many foremen were concerned about what would happen to their positions in the post-war cutbacks and consequently were looking to unionization to provide some sort of stability (ibid.).

[59] Rogow states that none of management's arguments against the necessity for unionized foremen were ever really proven, but it has been generally conceded by students of the unionized foreman phenomenon that the "closed door" for promotions threat may have been over-rated, and under the threat of unionization, management certainly did improve the lot of the foreman. Management was genuinely concerned about the growing unrest among the foremen and considerable monies were spent to neutralize the threat, largely by providing for the foremen the benefits the union promised to obtain. Wages were increased, improvements were made in security arrangements, and attempts were made to change the attitudes of the foremen and get them back into the "proper" ideological camp ("Supervisory Collective Bargaining." quoted in Hameed, Readings, ch. 6).

[60] Trade unionists also liked to remind management that managerial unionism was a fact of life in some European countries (e.g., Sweden and France).

[61] The allowance for units of supervisors has really only eliminated as an exclusion criterion the extent to which an individual supervises other workers. There still exists a multitude of other

criteria that, when applied, may dictate that a person is not eligible for inclusion in any unit.

[62] Mark Cosman, The Certification Process: Managerial and Confidential Exclusions (Ottawa: Legislative Research Branch, Labour Canada, 1974), p. 8.

[63] Alberta Labour Act, 1973, sec. 49(1)(h)(i). The Labour Relations Act (Ontario), sec. 1(3)(b). British Columbia Labour Code, sec. 1(1).

[64] In his 1966 study, Edward Herman listed the following as the major cirteria applied by the CLRB in managerial questions, and he also indicated that these were applied in varying degrees by other Boards in the country:
a) the right to hire and fire or effectively recommend such action;
b) the frequency of exercising duties and responsibilities and the amount of total working time spent doing so;
c) the importance of a position as indicated by the special privileges and working conditions afforded the individual holding the position;
d) the types of management functions performed. (Do these functions involve participation in grievance procedures or collective bargaining?);
e) is authority exercised with respect to people, equipment, or some combination of the two?; and
f) the ratio of supervisors to employees. (How many levels of supervision are there?)

At about the same time, the Alberta Board gave the following as the major considerations in managerial exclusion questions:
a) authority to hire and fire on own initiative;
b) authority to effectively recommend hiring and firing even though final authority may rest elsewhere;
c) effective exercise of disciplinary authority;
d) effective recommendation of employee movement(e.g., promotion, demotion, transfer);
e) performance of employee evaluation and submission of performance reports to higher authority;
f) effective recommendation regarding the internal organization of work;
g) involvement in collective agreement administration and negotiation;
h) involvement in administration and formulation of policies and procedures; and
i) acting in a confidential capacity in matters relating to industrial relations

(Calgary Local Board of Health v Alberta Association of Registered Nurses, Alberta Board of Industrial Relations, 30 December 1968).

The differences between jurisdictions, as Herman states, were not great.

[65] Bargaining Rights.

[66] Labour Boards repeatedly stress that they are not overly interested in what a job description says a person may do, but in what he actually does do. The British Columbia Board recently commented that

"the powers and responsibilities which the company has, in fact, placed upon the appointees will be the criterion for determining whether they are properly characterized as management" (Federation of Telephone Workers of British Columbia v The British Columbia Telephone Co. [1972], CLLR, 14141).

[67] The CLRB ruled that, despite the "collegial" relationship between all the workers at a Co-op radio station, the two individuals clearly holding managerial authority had to be excluded from the unit (Syndicat des Employes de CFYO v Co-operative de Télévision de l'Outaovais [1975], CLLR 16178).

[68] The CLRB has ruled that if a supervisor merely collects the data, but does not assist in making the evaluation, then his function is not managerial (Niagara Falls Bridge Commission v Teamsters #879 [1971], CLLR 16098).

[69] Vancouver Wharves Ltd. v International Longshoreman's and Warehouseman's Union #514 [1974], CLRBR.

[70] Mrs. F. Bairstow, "White Collar Workers and Collective Bargaining." Task Force Support Study, Ottawa, 1968.

[71] The CLRB found in-flight service managers to be non-managerial. One of the reasons given was that they spent most of their time performing duties similar to those they supervised and only a small percentage of their time in actual supervision (Wardair Canada Ltd. v Canadian Airline Flight Attendants Association [1974], CLLR 16103).

[72] Herman, Appropriate Bargaining Unit, p. 34.

[73] Quote from submission of W.S. Russell in the case of Lethbridge Northern Irrigation District v CUPE Local #70, ABIR, April 1971. In the same case before the ABIR, the employer argued that in looking at the managerial question one should also look at the relationship of the person in question to his employer "rather than his relationship to other employees" and that a person could have a considerable amount of authority without such authority being in relation to any specific group of employees. In the Chrysler Canada Limited case the Ontario Board recognized this possibility with a reference to an earlier decision:

"The Inglis Ltd. decision, recognizing that the exercise of managerial functions may assume different forms, identifies two benchmark situations--one where there is direct influence upon the employment relationship, and one where the influence upon the employment relationship is only indirect" (Chrysler Canada Limited v Canadian Industrial Automotive Union [1976], CLRBR, 448).

These two "benchmarks" correspond to the employer relationship and employee relationship categories of this study.

[74] Sack and Levinson, Ontario Board Practise, p. 29.

[75] Falconbridge Nickel Mines Ltd., OLRB Reports, September 1966,

p. 379, quoted in Sack and Levinson, Ontario Board Practise, p. 31.

Two decisions by the CLRB illustrate the importance of independent discretion. In the Vancouver Wharves case a major reason for the decision was that the ship and dock foremen were so severely limited in the amount of discretion they could exercise that they really had no managerial function in this respect at all. (Many of the limitations stemmed from provisions in the collective agreement.) In the Manitoba Pool Elevators case, the CLRB ruled that the independent discretion of the elevator managers was so limited by authority from above that the elevator managers were not "managerial" in a labour relations sense (Manitoba Pool Elevators v Saskatchewan Wheat Pool Employees Association [1973], CLLR 16091).

[76] In the McIntyre Porcupine Mines Limited case, the OLRB stressed the importance of looking at the "total" situation surrounding a position, and in doing so noted that:

"On the other hand, the totality approach means that the trappings of managerial status, as opposed to actual functions, are relevant. These trappings (offices, salary, etc) may indicate the perspective or intent of the particular parties before the Board, and this intent is of assistance when the other indices of managerial capacity are in balance" (McIntyre Porcupine Mines Limited v Steel Workers [1975], OLRBR, 352).

[77] A classic case of the import of having separate duties in order to be clearly distinguished as management is the Redcliff Foods case before the ABIR. The Alberta Board certified a unit encompassing all meat department employees, including (not specifically) the head meat cutter. The company filed the following protest:

"Our operating policies direct that the Head Meat Cutter is completely responsible for his department. Not only is he responsible for the production of gross profit, but he is responsible for ordering of supplies, hiring and firing of staff, and is, therefore, in a completely supervisory capacity, although, of course, he does use the tools of his trade.

While he is generally subject to the overall authority of the store manager, he is completely in direction of his own department" (Mr. R.J.F. Garland, Horne & Pitfield Foods Ltd., to Mr. G. Gough, ABIR, 8 February 1971, ABIR, LR-1700-R4).

In a letter one month later, Mr. Garland made similar arguments, but, in the end, to no avail. The fact that the Head Meat Cutter did, in fact, spend a lot of time actually cutting meat served to out weigh the other factors in this case (Redcliff Foods Ltd. v Butchers #373 [1970], ABIR, LR-1700-R4).

[78] In the Tamblyn Western Ltd. case, the ABIR noted that, despite their lofty title, the "Merchandising Managers" performed the duties of less titled persons in similar establishments. The latter were included in bargaining units and so were the "Merchandising Managers."

"In addition, the Board was cognizant of other positions with other employers in the retail field that in their opinion exercised at least the equivalent level of supervision and/or exercised functions of a higher level than the "Merchandising Managers" and are included within existing bargaining units" (Mr. W. Canning, Board Registrar, to

Mr. R. Shaw, 24 April 1975, Tamblyn Western Ltd. v Retail Clerks #397 [1975], ABIR, LR-2280-T3).

In the Redcliff Foods case, the Head Meat Cutter was also compared to similar positions in the Safeway food stores, the latter being included in the bargaining unit.

[79] In the Niagara Falls Bridge Commission case, for example, the employer argued that a person need only perform one or two managerial functions to be excluded. The CLRB disagreed, stating that such was not the case and that that approach would lead to more exclusions than was obviously the intent of the legislation. The position must be predominantly managerial in order to warrant exclusion (Niagara Falls Bridge Commission v Teamsters Local #879 [1974], CLLR 16098).

[80] The question of confidentiality was recently debated quite thoroughly in the case of Transair Limited. In this case, the CLRB enunciated three condtions that were necessary for the granting of an exclusion on the grounds of confidentiality:

a) the confidentiality must be in relation to industrial relations matters. Mere access to confidential information is not enough;
b) access to the information must be normal and regular. Accidental exposure, or exposure due to employer carelessness, are not grounds for exclusion; and
c) it must be shown that release of the information would in some way damage the collective bargaining position of the employer (Transair Limited v Canadian Association of Industrial, Mechanical and Allied Workers Local #3 [1971], CLRBR 282).

[81] An illustration of the importance of the word "employed" in the statutes occurred recently in the Ontario jurisdiction. Two resident superintendents of a condominium development were tentatively included in the maintenance unit of that structure. They were also "employers" because they lived in the development and were eligible to sit on the Board of Directors and vote on matters affecting the condominiums; such matters would no doubt in future involve dealings with the unit they were part of! The Ontario Board ruled they could be members of the unit:

"It is true that they do have access to confidential information, and that this confidential information may in future involve "matters relating to labour relations." However, section 1(3)(b) only applied to those "employed in a confidential capacity" in regard to such matters and the respondent admits that they are not so employed" (York Condominium Corporation #75 v Labourer's #183 [1975], OLRBR 536).

[82] York University v York University Staff Association and Employee Group (objectors) [1975], OLRBR 951).

[83] Transair Limited v Canadian Association of Industrial, Mechanical, and Allied Workers Local #3, CLRB Reports, p. 282.

"It is a serious matter to find that a non-managerial employee should be excluded from collective bargaining. The employer has an onus to organize its affairs so that its employees are not occasionally placed in this position of potential conflict of interest, if that result can be readily avoided" (Corporation of the District of Burnaby v CUPE #23 [1974], CLRBR).

[84] The B.C. Board's handling of the Hayes Trucks Ltd. case exemplifies this approach. The employer wanted the exclusion of a secretary who was supposedly employed in a confidential capacity. The Board disposed of the employer's case as follows:

a) "The financial information to which Ms. Krause has access is not sufficiently related to labour relations that she must be excluded from the bargaining unit; and the fact that she merely 'transcribes' it for the use of others points out her limited connection with the data";
b) "Access to these management personnel files is also not sufficient to exclude her from the bargaining unit. There is a distinction between 'labour relations matters' and so-called personnel matters. Knowledge of the executive payroll is not a matter which is confidential in relation to labour relations"; and
c) "The employer's unilateral act of shifting employee job functions for short periods of time due to temporary absences of other employees who perform confidential functions is not sufficient to remove a person from the bargaining unit. She must be employed in that capacity, not just replacing someone temporarily" (Hayes Trucks Ltd. v Steel Workers #3253 [1974], CLRBR 285).

[85] Hodgson's Steel and Ironworks Limited v Steelworkers [1976], OLRBR 313. The B.C. Board followed similar principles in Alpine Land Development when it excluded the wife of the company president, but quickly added that the exclusion had nothing to do with family ties (Alpine Land Development Ltd. v Association of Commercial and Technical Employees #1713, and B.C. Land Surveyors Union [1975], CLRBR).

In Bateman's Food Market Ltd. the ABIR altered the unit description by deleting the portion requiring the exclusion of "members of the immediate family" (Bateman's Food Market Ltd. v Retail Clerks #401 [1969], ABIR, LR-1026-131).

[86] Yarrows Limited v Association of Commercial and Technical Employees #1711 [1974], CLRBR.

[87] Ibid., p. 31.

[88] McIntyre Porcupine Mines Limited v United Steelworkers of America.

[89] Ibid., p. 267. [90] Ibid., p. 270. [91] Ibid. [92] Ibid., p. 271.

[93] Ibid., p. 281. [94] Ibid., p. 288.

[95] The Board doubted it had the authority to create a special unit for the shift boses and foremen, so it dismissed the application altogether.

[96] McIntyre Porcupine Mines Limited v Steelworkers, 299.

[97] Chrysler Canada Limited v Canadian Industrial Automotive Union.

[98] Ibid., p. 452.

[99] McIntyre Porcupine Mines Limited v Steelworkers, 298.

[100] "Further, while many white collar bargaining units are similar to bargaining units in the industrial sector, there are many instances where the industrial model, which we have developed at this board, is not applicable to the white collar sector. It is therefore necessary that our decisions with respect to bargaining units and managerial personnel reflect the new and evolving situations rather than reflect an over-simplified application of the former industrial criteria to the white collar area" (Toronto East General Orthopaedic Hospital Inc. v Ontario Nurses Association and Service Employees Union #204 [1974], CLRBR 229).

[101] Corporation of the District of Burnaby v CUPE #23.

[102] Under the B.C. statutes these people could not be excluded simply because of their supervisory duties, but only on grounds of involvement in other managerial functions.

[103] "Nonetheless, I find that largely because of their substantial authority over the work and employment status of the employees under them, fourteen subjects of this application are not 'employees' within the meaning of the code" (District of Burnaby v CUPE #23, 8).

[104] Ibid., p. 9.

[105] The Globe and Mail Limited v Toronto Newspaper Guild #87 [1976], OLRBR.

[106] Ibid., p. 663. In 1963 the District Sales Representatives were excluded from the unit.

[107] Ibid., p. 668.

[108] Ibid., p. 667. There still exists, of course, the possibility that people not exercising "people-related" authority may still be excluded because of the confidentiality of their position.

[109] Toronto East General Orthopaedic Hospital Inc. v Ontario Nurses Association, and Service Employees Union #204, 231.

[110] "In other words, as mentioned earlier, the role performed by the foreman in the industrial setting has been internalized in every employee through technical and professional training" (ibid.).

[111] "The instant case raises the further problem of the exercise of managerial authority in professional or semi-professional situations. It is patent that if this head nurse exercises managerial authority over the other nurses that she would not exercise that authority in a manner similar to the traditional foreman. The manner of authority in

this situation is more subtle, if at all. It must be remembered that the employees in the bargaining unit are responsible and highly-trained personnel they may on the one hand require very little direction or authority in performing their tasks, while on the other hand, direction and authority may arise from such subtle mannerisms as voice inflections; yet again direction may arise out of group discussion or participation. The task confronting the Board is to evaluate the evidence in a manner that captures authority and it is a most difficult task indeed" (Victoria General Hospital v Health Sciences Association 1975 , CLRBR 43).

[112] Vancouver City College v Faculty Association of Vancouver City College (Langara) [1974], CLRBR.

[113] Ibid., p. 298.

[114] British Columbia Telephone Company v Society of Telephone Engineers and Managers, and Federation of Telephone Workers of British Columbia [1976], CLRBR.

[115] Ibid., p. 282.

[116] "The average annual growth rate for white-collar occupations between 1961 and 1972 was 4.4 percent (professional and technical occupations, 6.4 percent), compared with an annual growth rate of 1.9 percent for all other occupations" (Woods, *The Current Industrial Relations Scene in Canada*, p. S-MP-10).

[117] Etzioni identifies three types of organizations that professionals are likely to be involved in:

a) the Professional Organization--search for knowledge is paramount, professionals are often in control (schools, research institutes);
b) Service Organizations--professionals provided with what they need to do their work, but are not employees and are not in control;
c) Non-professional Organizations--goals here are not necessarily related to any goals of the professionals (industrial or military establishments), who may or may not have any control over what occurs in the organization.

It is this last group of individuals who have expressed an increasing interest in the institution of collective bargaining (Amitai Etzioni, *The Semi-Professions and Their Organization* New York: The Free Press, 1969 , p. xi).

[118] L.W.C.S. Barnes, *The Changing Stance of the Professional Employee* (Kingston, Ontario: Industrial Relations Centre, Queen's University, 1975), p. 2.

Etzioni found the root of the "uncomfortable feeling" in the conflicting principles at work in professional and organizational value systems:

"It is this highly individualized principle which is diametrically opposed to the very science of the organizational principle of control and co-ordination by superiors--i.e., the principle of administrative authority. In other words, the ultimate justification for a professional act is that it is, to the best of the professional's knowledge, the right act. He might consult his colleagues before he acts, but the decision is his. If he errs, he still will be defended by his peers. The ultimate justification of an administrative act, however, is that it is in line with the organization's rules and regulations, and that it has been approved--directly or by implication--by a superior rank" (Semi-Professions, p. xi).

Roger Chartier claims that professionals in an organization, while having "an extensive intellectual training coupled with a high degree of specialization, a professional association with a legal framework, based on a code of ethics, and enriched by a specialized literature" in common with their counterparts not employed by organizations, do differ in two very important ways:

a) the nature of services rendered--in the traditional professional relationship the service rendered was usually "discontinuous, direct, and immediate." In a large organization, the service is likely over a long period of time and the relationship rather impersonal, but continuous; and
b) the degree of professional autonomy--in traditional professional practise the practitioner was free to "render his services in complete freedom vis-a-vis the choice of his methods and conduct," but the organization-bound professional often has his personal freedom restricted by overall organization policy

(Roger Chartier, The Management of Professional Employees, Kingston, Ontario: Industrial Relations Centre, Queen's University, 1968 , p. 4).

[119] Shirley B. Goldenberg, "Professional Workers and Collective Bargaining," Task Force Support Study, Ottawa, 1968.

[120] "The outlook over the next ten years or so was found to be even more depressing. Engineering graduates will continue to enjoy a seller's market until 1978. But after that the demand is expected to fall off sharply. By 1984 there will likely be about 3,300 engineering graduates fighting for only 1,500 job openings! Chemists will be even worse off with the supply of new Bachelors in chemistry expected to be more than double the demand for the next 10 years. Even future business and commerce graduates are foreseen as facing a sharp decrease in demand . . . after 1978 as the population growth declines" (Financial Post, 6 September 1975, quoted in Barnes, Professional Employee).

[121] "While the 1972 salary of a holder of a bachelor or master's degree, five years after bachelor graduation, was 134.4 percent of that earned by his comparable predecessor five years earlier, the figure for a PhD was only 120.3 percent of that of his predecessor. Not only did the salaries of the holders of doctorates appear to be rising more slowly than those of graduates with lower degrees, but in absolute dollar terms, the PhD , by 1972, was unlikely to yield its holder any very meaningful advantage, at least in the first half of his, or her, career" (Barnes, Professional Employee, p.7).

Professionals argue, much as the craft unionists do, that to allow professional salaries in general to decrease, while simultaneously allowing the range between degree levels to decrease, can only result in a long-run shortage of professionals.

[122] "The unorganized professional worker, like his other white-collar associates, found that not only was his relative economic status being undermined by the militant upthrust of organized labour, but that his views on the development of society in general, and of the economy in particular, were receiving remarkably little attention in the halls of government compared to the consideration which was given to the opinions of both 'big labour' and 'big business'" (Barnes, Professional Employee, p. 7).

[123] This was, and still is, a concern of many teacher groups. If parents blame teachers for the type or quality of education their children receive, then teachers feel they should have a direct influence on matters such as cirriculum. Having the school board or other administrators make the decisions, while the teacher takes the criticism, is not just in the eyes of most teachers.

This example points out the tendency for the issues involved in collective bargaining to widen when professionals are involved. These people are not content to bargain over wages, hours, and working conditions only; they seek, and believe they have the skills, to be involved in the policy forming process ("Collective Bargaining and the Professional Employee," Columbia Law Review February 1969 :287).

[124] The issue of professionals as managers is discussed in the section of this work dealing with the managerial problem.

[125] The Ontario Act toys with a definition in section (1) part (1)(L) when it trys to define a professional engineer:

"'Professional Engineer' means an employee who is a member of the engineering profession entitled to practise in Ontario and employed in a professional capacity." This definition, in effect, restricts the term "engineer" to those who have become members of the Ontario Association, and does little to assist the Board in coming up with an overall definition of the term.

[126] Examples in Alberta would be the Chartered Accountants Act, the Dental Association Act, the Legal Profession Act, the Medical Profession Act, or the Chiropractic Profession Act.

[127] Abodeely, Appropriate Bargaining Unit, p. 212. In defining the five occupational categories listed in the Public Service Staff Relations Act, the Public Service Commission defined the professional category as follows:

"The Scientific and Professional Category is composed of occupational groups engaged in the application of a comprehensive body of knowledge acquired through university graduation in fields specified in the group definitions, and of professional groups in which membership in Canada is generally controlled by legally established licensing bodies" (Finkelman, Bargaining Units, p. 31). This definition is also of little help since it only recognizes those groups who have generally been accepted as professionals. It is the new claimants that concern Labour Relations Boards.

[128] M.L. Cogan, "Toward a Definition of Profession," Harvard Educational Review (Winter 1953):34.

[129] Surrey Memorial Hospital v Hospital Employees Union Local #180 and Health Sciences Association of British Columbia [1975], CLRBR, p. 304.

[130] The Alberta Board also appears to be rather hesitant when faced with the problem of deciding who will be a professional, or even a para-professional. In a case involving the question of whether certain persons were para-professional or secretarial and clerical, the Board resorted to the first volume of the *Canadian Classification and Directory of Occupations* to see how those in question were classified (Board of Governors of Mount Royal College v Mount Royal College Non-Academic Staff Association [1974], CLLR 16451).

[131] Goldenberg, "Professional Workers." Within a large organization there may exist several different professions each engaged in different functions. These groups are often arranged in terms of their contribution to the company, rather than normally recognized professional divisions. For example, one large company appearing before the O.L.R.B. had its professionals in a "Professional Services Division," but the division was divided into the following functions:
a) soils;
b) concrete;
c) inspection;
d) appraisals;
e) physical testing; and
f) non-destructive testing.
Individuals in a single "professional" category could be found in several of the company divisions (Warnock Hersey International Ltd., Professional Services Division v Plumbers and Pipefitters #46 [1974], CLRBR.

[132] Cogan, "Definition of Profession," p. 48.

[133] William J. Goode, "The Theoretical Limits of Professionalization," quoted in Etzioni, *Semi-Professions*, p. 277.

[134] Ibid., p. 277. Wilensky points out that the line between profession and non-profession will get harder to cross as society in general becomes better educated. The "mystery" will not seem as great (H.L. Wilensky, "The Professionalization of Everyone? " *American Journal* of Sociology September 1964).

[135] Goode, "Theoretical Limits," quoted in Etzioni, *Semi-Professions*, p. 278.

[136] "In short, the degree of professionalization is measured not just by the degree of success in the claim to exclusive technical competence, but also by the degree of adherence to the service ideal and its supporting norms of professional conduct" (Wilensky, "Professionalization," p. 137).

[137] Chartier, *Professional Employees*, p. 5. Wilensky identifies five steps that are usually taken by a group seeking to become

recognized as a "profession." The steps often occur simultaneously:

a) People start doing full-time that which needs doing;
b) a training school is established, ideally in co-operation with a university;
c) a professional association is formed. This association then:
    i) defines the "core" task and shuffles the so-called "dirty work" to some other occupation;
    ii) tries to reconcile the interests of the older and newer practitioners, while also presenting a united front to the public;
    iii) fights the external threats of other associations of workers involved in similar work;
d) political agitation is begun in order to gain the support of the law through licensing provisions; and
e) a formal code of ethics governing conduct and standards of service is drawn up and approved by the membership (Wilensky, "Professionalization").

[138] Bell Canada v Association of Engineers of Bell Canada [1976], CLRBR, 353. In this decision the CLRB also used the following quote as a justification for their decision:

"In this respect the Board has often stated that the mere exercise of professional or technical skills or the performance of an employees job will not in itself justify separate recognition for the purposes of collective bargaining" (York University v York University Staff Association, and Group of Employees (objectors), 556).

[139] Stratford General Hospital v Ontario Public Service Employee's Union, and Association of Allied Health Professionals [1976], CLRBR, 77.

The Ontario Board does, however, still recognize the specific provisions for the engineering profession. In a recent case the Board split up a group of employees doing substantially the same work by placing those who were members of the Association of Professional Engineers of Ontario in their own bargaining unit. The Board rejected the appeal from the excluded employees on the grounds that the inclusion of section 6(3) in the Act clearly indicated that the legislature endorsed separate units for engineers, and the Board did not wish to contradict this intent (Northern Electric Company Ltd. v Northern Electric London Professional Association, and United Auto Workers #1525 (Intervenor), [1975], OLRBR).

[140] B.L. Adell and D.D. Carter, Collective Bargaining for University Faculty in Canada (Kingston, Ontario: Industrial Relations Centre, Queen's University, 1972), p. 57. The use of the "state of organization" criterion would also militate against Goldenberg's third class of professional, those with a high level of academic training and specialization, but no real formal organization. To apply the criterion would, in addition, involve the extent of organization criterion, a criterion that Boards are generally reluctant to openly apply. (In such a case the extent of organization would be applied to the applicant's structure, rather than the applied-for unit.)

In a recent case the B.C.L.R.B. ruled that a group of employees could be included in the professional bargaining unit of the employer, even though they were not members of their respective professional associations. The Board felt that since these people did not have to join the association as a condition of employment, the existence of the association was immaterial. Although the case is atypical because it was heard under the auspices of the Public Service Labour Relations Act, it is, I think, still illustrative of the declining importance of the professional association in unit determination matters (Public Service Commission v B.C. Government Professional Employees [1974], CLRBR).

[141] Has society accepted the group's claim to being interested only in a high standard of service to society, or is the group regarded as merely another professional lobbying group? Professional societies would face an interesting problem in this regard. In order to qualify as professionals they would have to convince a Labour Relations Board of their predominantly service orientation, but they would also have to prove that the applicant association was a bona fide trade union, and to do so they would have to include in its objects the promotion of the group's interests through collective bargaining. Whether the two objectives are compatable is surely a moot point, and the debate within the association is often a spirited one. The March 1970 issue of the Americal Journal of Hospital Pharmacy contains an excellent example of such a conflict as the pharmacists tried to decide whether they should use their society as an instrument for collective bargaining.

[142] Cogan, "Definition of Profession," p. 36. According to Cogan, the groups who serve the vital needs of mankind are those who mediate man's relations to God, the state, and his own body, or the clergy, lawyers, and medical doctors respectively.

[143] Stratford General Hospital v Ontario Public Service Employee's Union, p. 81. The Board used this quote from Professor Freedson to justify their decision.

[144] For example, the BCLRB appears to be considering a much broader definition of the word "professional," at least in the hospital field. In lamenting the fragmentation created by its creation of a unit of hospital interns the Board made the following comment:

"For instance, a persuasive argument can be made for the first step of a broad, all-professional bargaining unit composed of nurses, para-medical professions, and house staff" (St. Pauls Hospital v Professional Association of Residents and Interns [1976], CLRBR 178).

[145] Goldenberg, "Professional Workers."

[146] Barnes, Professional Employee, p. 3. "The American Medical Association has recently gone on record as favouring collective bargaining by physicians, reversing its previous position that group action by doctors is incompatable with good patient care" (Woods, Current Industrial Relations, p. S-U-30).

Chapter 3

THE HEALTH CARE INDUSTRY

THE NATURE OF THE INDUSTRY AND THE WORK FORCE

The health care sector provided some of the most complex and difficult bargaining unit questions faced by the Alberta Board of Industrial Relations during the period covered by this study. Almost twenty percent of the total number of bargaining unit decisions between 1966 and 1976 involved hospitals or related facilities. The detailed nature of much of the correspondence relating to board hearings and other investigations suggests that of the total time spent on bargaining unit matters, far more than twenty percent was spent on matters relating to health care facilities. This investment of time and energy was warranted because the ABIR had to, in effect, decide what was the acceptable bargaining structure for the health care industry in the province.[1] Fundamental questions involving the representation rights of individuals and groups, as well as the membership basis of several unions, had to be and were answered.

Two factors combined to make the unit determination question particularly vexing in the health care field: the industry is a public-sector essential service, and the structure and work force of the industry are unique in several ways.

The health care industry operates in the "public sector" in the sense that it is heavily dependent upon government funding for continued operation and it provides a service of extreme interest to the general public. The literature on the unique characteristics of public sector institutions for collective bargaining purposes is voluminous and still expanding, but the general characteristics of the position have been summarized by C.B. Williams as follows:[2]

1. Scope of Bargainable Issues: the power relationship between the two parties is not the only factor determining the extent of the terrain covered in collective bargaining;

2. Nature and Locus of Decision-Making Authority: locating a single source of authority in the public sector is often difficult. Discretion is often limited by a chain of command or budgetary restraints that reach back to the legislative process itself.

3. Absence of Certain Private Sector "Facts of Life": private sector features, like a competitive market, pursuit of self-interest, employer resistance to union activity, employer authority to control conditions of employment and lack of legislative interference until the point of impasse "simply do not apply nor exist in the monopoly flavored public employment field."[3]

4. Nature of the Beneficiaries: those who stand to benefit from collective bargaining are not the predominantly "working class" group usually associated with collective bargaining in the private sector. Many of the groups employed in the public sector do not perceive themselves as "working class", and they believe their educational background and conditions of employment preclude others viewing them as such.

5. Role of Economic Sanctions: the usefulness of the threatened work stoppage for avoiding or resolving an impasse situation "does not materialize in the public sector structure in part due to the

lack of accountability on the part of the structure and in part due to the absence of the private sector economic functioning characteristics of nearly all public sector activities."[4]

These peculiarities of the public sector bargaining situation combine to suggest that many of the accepted "rules" and "criteria" that labour relations boards have applied with some success in private sector unit determination questions may not work as well in the public sector. In order to make the leap to the public sector successful, some criteria may have to be given greater influence (e.g., existing administrative structure of the employer) while others may be given considerably less weight than they are granted in private sector unit decisions.[5]

Health care is also an essential service. Many government services could cease to operate for short periods of time without causing undue hardship for anyone. Such is definitely not the case in health care, particularly in rural communities. The paramount importance of uninterrupted service has clear implications for the unit determination question. The traditional concern of labour relations boards with stability is increased tremendously in such an essential service industry. The threat of a work stoppage must be minimized. Acceptable structures for bargaining are thus likely to resemble the private industry "industrial" rather than "craft" unit model.

Unfortunately, the structure of the work force in health care institutions does not easily lend itself to such a stable bargaining unit structure. Several aspects of this work force merit attention:

1. The cost of maintaining the work force is by far the largest single cost item on the institution budget. Labour costs

range from sixty to seventy-five percent of the total budget in most hospitals.[6]

2. Health service is a "service" industry. It is thus labour-intensive and is becoming increasingly so.[7]

3. The hospital or health care work force is very fragmented. There are many distinct skill levels ranging from medical staff to support services such as laundry and gardening.[8] Mobility between these job functions is very limited. Specialized training, licensing requirements, and professional associations make transfer from one group to another, either vertically or horizontally, difficult at best.

4. Women play a major role in the health care work force. They are often the dominant group in the nursing functions and in clerical and related activities.

The tremendous proportional cost associated with the work force implies that the employer is likely to strongly favour a bargaining structure that produces as much predictability in the wage cost figure as possible. The avoidance of whipsaws, and other activities associated with smaller units, is important, as is the higher cost of administering a fragmented structure. The fragmented work force suggests a tendency in the opposite direction. Individual groups with little transfer between groups, along with specialized training, suggest a craft structure not unlike that of the construction industry.[9] Small group identities are also promoted by professional associations that transcend the individual institutions. Individual identification is centered on a particular job activity and the promotion of the interests of those performing the task.

The presence of a large number of women also has unit determination implications. Their position is a traditional one in areas like nursing. Such occupations have customarily received individual attention and recognition and have thus built up a strong group identity. Many of the women are also "secondary breadwinners" having different bargaining interests from those who provide the primary source of income for the family. The tendency toward fragmentation is thus supported by the presence of women in the hospital work force.

The health care industry is not a monolithic industry as would be exemplified by the large, complex, big-city hospital. The services provided and the institutions providing them vary tremendously in scope, overall purpose, and institutional size. Functions range from providing limited and rudimentary care for the aged to providing the full range of health care facilities to a large metropolitan area. The institution itself may be a small rural hospital with limited personnel and technical resources, or it may be a large city hospital providing teaching, research, and health care facilities in cooperation with a host of other institutions. The implications for unit determination are clear. A structure that seems perfectly reasonable in one case may be totally absurd in another.[10] In this sense the level of flexibility needed is as great as that often required in the private sector.

This need for flexibility, as well as the compartmentalization of the work force, was reflected in the bargaining structure that existed in the Alberta health care industry at the beginning of the ten year period encompassed by this work. Six major bargaining agents appeared regularly in certification matters. The Alberta Association of Registered Nurses represented the general nursing population. Both the Canadian Union of Public Employees and the Service Employees International Union involved themselves in the bargaining interests of the "blue-collar" general service and "white-collar" administrative employees. The Alberta Certified Nursing Aide Association and the Alberta Division Employee Pharmacists Association represented those indicated in their respective titles, while the International Union of Operating Engineers represented a specific subsection of the service workers, the plant engineers. The "inner circle" of workers of a certain type represented by each bargaining agent is indicative of the fragmentation of the work force, but as this chapter will indicate, the jurisdictional vagaries and overlapping occurring at the "fringe", particularly in large institutions with changing work patterns and divisions, is simultaneously indicative of the flexible approach then needed to operate in the industries' various institution types. Not all bargaining agents operated in all types of institutions and not all agents represented identical units in all cases. The level of stability-related "standardization" across the industry was not great.

A potentially tense situation does exist in health care. The public sector essential service nature of the industry makes it necessary to place a premium on stability, yet the nature of the industry work force and the spectrum of institution size and function imply that a more fragmented, "situation specific" bargaining structure would better serve those employed in the industry.[11]

The activity of the Alberta Board in the health care sector during the time period under study was largely devoted to a search for a solution to the problems posed by the changes in the structure of the hospital work force. An examination of the Board's response to this challenge is the "core" of this chapter.

THE FIVE UNIT STRUCTURE

The Overall Position of the Alberta Board

Metzger and Pointer made the following comment regarding hospital personnel structures:

> Hospital personnel structures are becoming 'inverted pyramids' due to the large influx of highly trained technicians in addition to the replacement of unskilled personnel by capital expenditures.[12]

In committing itself to a bargaining structure suitable for this large group of "highly trained technicians" the ABIR was, by default almost, committing itself to an overall bargaining structure. Any decisions regarding this group of employees would have an effect on other employees in the institutions involved. For this reason the decisions were not made in isolation, but rather with an eye towards the total structure that was being created.

The problems associated with the "professional" group stemmed from the nebulous position of the group as a whole (that "position" is generally outlined in Chapter 2 of this study) and from the peculiar position of the group within the hospital structure. The group was not a true "profession" in the sense of being a part of the medical staff of the hospital,[13] yet it was also clearly not linked through community of interest with any of those performing the less-skilled support activities. The group itself was not homogeneous. Some specialties had progressed further along the road to "professionalization" than others, and educational and other requirements varied from one specialty to another, as did concern over the protection of work jurisdictions and "professional" status. Voluntary recognition even existed in some cases, adding the problem of reconciling desired structure with existing structure. The Alberta Board has summarized its position respecting this group, and the health care bargaining structure in general, as follows:

> As dealt with in other decisions of this Board, the history of bargaining units within the hospital industry has shown that with respect to classifications or occupational terminology, the usage varies considerably throughout the industry, as do the duties and responsibilities of a particular occupational class. In addition, advances in medical science, particularly in the paramedical technical field, have brought about the creation of new occupations on a continuing basis.
>
> It is the opinion of the Board that focus for unit composition should not, or will not, rely exclusively on occupational terminology, but on the functions of those persons in a unit as it relates to its functional contribution to the employer in question.[14]
>
> . . . the Board has, in recent decisions, sought to establish consistent and uniform units to avoid fragmentation and the multiplicity of units in the hospital industry.[15]
>
> 1. Professional Direct Patient Care.
> 2. Auxiliary Nursing Care.
> 3. Professional Paramedical Support.
> 4. General Support Services.
> 5. Paramedical Technical.[16]

Outlined above is the position of the ABIR, in its own words, regarding bargaining units in hospitals and health care facilities at the time this study was begun. The Board had established five acceptable unit types based on a policy of avoiding unit fragmentation and any reliance on occupational terminology for unit delineation purposes. The development of the "functional approach" and five standard units is particularly interesting because neither approach has been adopted in other jurisdictions considered in this study. These standard units represent the Alberta Board's response to the problem of the growing significance of paraprofessional and technical personnel in the health care sector. Since it was over these groups that most of the appropriate unit controversy raged, it is not surprising that the majority of cases encountered in data collection activities involved the auxiliary nursing care and paramedical technical units, with the other classifications apparently almost "falling out" once policy in these areas was established. These two standard units appeared to be the hardest to define with the former overlapping with some of the technical functions and the latter not always being distinct from professional paramedical services and auxiliary nursing care. An examination of some relevant cases will illustrate these points.

Auxiliary Nursing Care

The initial policy. In a case handled early in 1967, the ABIR had placed before it a unit that would have included "ward aides".[17] The hospital board objected to the unit description on the grounds that there was no such thing as a "ward aide", and that the closest thing to such a function was a "certified nursing aide", and these people had their own association and did not wish to be represented by the applicant. The apparent confusion over nomenclature for nursing support personnel continued into the next year. In a case involving the Misericordia Hospital,[18] the Board was asked to certify the following unit:

> All employees except sisters, department heads, chief accountant, supervisors, foremen, dieticians, personnel manager, personal secretaries, purchasing agent, credit manager, matrons, chief librarian, lab technicians and assistants, all students, lab biochemists, social service secretaries, pharmacists and assistants, operating engineers, registered and practical and graduate nurses, certified nursing aides, nursing orderlies, X-ray and lab technicians, lab secretary and lab typist, medical stenographer and payroll clerks.

The Board turned down a request that operating room technicians be excluded from this unit. The hospital board argued that to exclude nursing aides and nursing orderlies while including operating room technicians was absurd. They performed similar functions and had similar interests. Later that same year the unit was altered and, again, the certified nursing aides and nursing orderlies were left out of the unit; they apparently did not belong in a general-support-type unit, but in the Holy Cross Hospital case[19] it was established that such nursing personnel also did not warrant a unit of their own, the argument being that the "orderlies are only a part of the nursing team."[20] and, as such, should not be placed in a unit of their own. This policy regarding no separate units for orderlies still held in 1970 when the Board rejected a request to have a separate unit for orderlies,[21] and instead included "certified nursing orderlies" in the existing general-support-type unit.[22]

If there were difficulties with the placing of auxiliary nursing personnel in British Columbia during the period to 1970 it is not apparent in the record of unit decisions. The standard hospital unit was consistent throughout this period, the following being a typical example:

> All employees employed at the Mount St. Mary's Hospital, 999 Burdett Avenue, Victoria, except registered nurses.[23]

Only registered or graduate nurses are specifically mentioned as exclusions, others being apparently left to the discretion of the parties in subsequent collective bargaining. The practise of the Ontario Board partially resembled that of the Alberta Board with nursing care personnel generally included in all employee units during that time. The practise of the Ontario Board in hospitals is well summarized by Sack and Levinson:

> In hospitals, the Board has found units of nurses and all-employee units to be appropriate. Graduate and registered nurses are included in hospital nurses' units, as well as hospital teaching and nursing service nurses. The all-employee unit usually includes all employees, except medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dieticians, student dieticians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineers, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period. In clarity notes, the Board has declared that "technical personnel" comprises physiotherapists, occupational therapists, psychologists, electroencephalographists, electrical shock therapists, laboratory radiological, pathological and cardiological technicians. Maintenance staff are included in such an all-employee unit. So are registered nursing assistants.[24]

The Ontario policy of including nursing assistants would appear to coincide with the actions of the Alberta Board in 1970. The situation was complicated by the existence, as an official applicant, of the Alberta Certified Nursing Aide Association. The association sought to represent units made up of certified nursing aides only. In the Royal Alexandra Hospital case, the ABIR did not favour such a unit, dismissing the application with this comment:

> . . . the Board was of the opinion that 'Certified Nursing Aides' constitute only a segment of employees of generally similar or comparable skills employed by the hospital with similar conditions of employment. Although the Board can and does appreciate the desire of individual groups to retain a separate identity for collective bargaining, the Board does not consider that a multiplicity of units in a hospital in this area is either logical nor does it result in units of employees appropriate for collective bargaining.[25]

The revised approach. This Board policy would appear to have spelled the demise of the Certified Nursing Aides as a separate group in the hospital bargaining structure, but the policy changed. In 1973 the Board approved a unit of Certified Nursing Aides and Operating Room technicians in the same hospital in which a year earlier a unit of

Certified Nursing Aides had been deemed inappropriate. The Board freely admitted the certification was a reversal of previous policy, and attributed the change to the public hearings held on the subject of bargaining structures in health care:

> As a result of such hearings, the Board has considered it advisable to change its position regarding a unit of this nature to ensure that persons employed in such units are permitted the right of collective bargaining through a bargaining agent.[26]

Although larger units were more desirable, the Board apparently realized that in the hard-to-organize health care industry, less than ideal units may have to be certified in order for it to fulfill its obligation to facilitate the spread of collective bargaining. In keeping with its new policy, the Board certified units of "all employees when employed as certified nursing aides" at the Holy Cross Hospital[27] in Calgary and at the General[28] and Misericordia Hospital[29] in Edmonton. The Misericordia Hospital governors complained that the unit was inappropriate because it did not contain operating room technicians or Certified Nursing Orderlies, both of whom shared a community of interest with Certified Nursing Aides. When the applicant did not use the word "certified" in the unit description, the Edmonton General reversed the Misericordia argument by complaining that without the qualifying word the unit could be construed as encompassing far too broad a group! Identical units were certified in each case, the Board only adding the proviso that the inclusion of the word "certified" was not intended to limit the unit. Those working in that particular job classification were to be included in the unit, whether they were "certified" or not.

The ABIR policy of separate units continued unchanged through 1974. An interesting twist to the nursing personnel problem did occur, however, in Ontario. In the Wellesley Hospital case,[30] the employer did not argue that nursing assistants should be included with the service, paramedical or support personnel, but that all those working at nursing-related activities should be grouped with the registered and graduate nurses. The employer felt that the "team nursing" concept being used in the hospital dictated that all those on the "team" should be in the same unit, and also that the auxiliary nursing personnel did not clearly fit with any other group in the hospital. The Board acknowledged that the "ideal" unit may indeed be just such a group, but also that the Board need only certify an appropriate unit, not the most appropriate unit. The registered nurses were, by themselves, an appropriate unit. The Board also felt it would be unfair to saddle the nurses' association with the added organizational load of the nursing assistants.

The final attempt. The Alberta policy of separate units spilled over into 1975,[31] but the limitations of the narrowly-defined unit were soon apparent. The Canadian Union of Public Employees (CUPE) sought a unit of "all certified nursing aides employed by the employer" at the Misericordia Hospital[32] in Edmonton. The employer protested on the grounds that the unit as described would infringe on existing units because Certified Nursing Aides were also employed in other capacities in the hospital, and some were thus in units represented by the Service Employees International Union (SEIU). The employer also did not wish to see the furtherance of the artificial division between Certified Nursing Aides and Nursing Orderlies, and the granting of another separate unit for the CNA's would do just that. The Board itself noted that the unit as applied for would create serious community of interest problems and that if the unit were altered to include only certified nursing aides working as certified nursing aides, it would exclude six people who were performing CNA work without being certified. The Board rejected the application and shortly thereafter made a revision in the acceptable unit description. In the cases of Mayerthorpe General Hospital[33] and Islay Municipal Hospital[34] the Board certified units that read:

> All auxiliary nursing care personnel when employed as CNA's, nursing aids, registered nursing orderlies, nursing assistants and operating room technicians.

The use of the phrase, "When employed as", provided a much more flexible unit definition. The occupational qualifications following the phrase could be altered to facilitate organizing if such was desired in a particular case, but by including the exact occupations involved the confusion surrounding unit membership was eliminated. The unit still did not deal with the problem of the changing titles and job functions though. (The inclusion of specific job titles may inhibit the unit's usefulness in the future if such titles become meaningless.) In the Magrath Municipal Hospital case[35] we find a return to the broader unit policy outlined previously in the 1972 Royal Alexandra Hospital case, with the unit description reading:

> All employees when employed in auxiliary direct nursing patient care.

The return to the more general unit description was apparently not wholly supported by the Certified Nursing Aides. In the case of Pincher Creek General Hospital[36] the Nursing Aides applied for a unit of:

> All auxiliary nursing care personnel when employed as certified nursing aides, nursing aides, nursing assistants and operating room

technicians.

The unit was rejected and, in doing so, the Board stated that had the unit followed the "auxiliary direct nursing patient care" format it would have been acceptable. The applicant apparently doubted the sincerity of the Board's feelings and applied for the same unit again, this time with registered nursing orderlies included. The unit was, not surprisingly, rejected again:

> While the Board is well aware of the continuing uncertainty relating to unit determination in the field of auxiliary direct nursing patient care, it is the opinion of the Board that in order to establish meaningful development of labour management relations in the hospital industry in general and in the field of auxiliary direct nursing patient care in particular, appropriate bargaining units must be formulated in a way that leads to efficient and unambiguous collective bargaining unit administration.[37]

In spite of the above comment, the Certified Nursing Aides tried one more time, this attempt with a unit description of:

> All employees when employed as Certified Nursing Aides licensed in Alberta, other Certified Nursing Aides not licensed in Alberta but who are licensed or registered in another jurisdiction. Other employees whose qualifications and training are similar, and those employed in direct patient care where the pre-requisite for employment is a certified nursing aid, operating room technician.

The Board pointed out that, since its suggestions for a proper unit were being consistently ignored, it could be assumed that the applicant simply did not want to represent some of the classifications that would be included under the more general unit description, despite the fact that such people had an obvious community of interest with Certified Nursing Aides. With the following comment the application was again rejected:

> The Board is also aware that within the auxiliary patient care field in the hospital industry there are many classifications with their related occupational terminology. Usage of the terminology varies considerably from hospital to hospital. As a result, in the opinion of the Board, the focus on unit determination must centre on the function of the unit as it relates to its functional

> contribution to the hospital in question and not on the ambiguous and uncertain occupational terminology used. It is the opinion of this Board that in the field of auxiliary nursing care the unit would be comprised of all employees of the employer providing auxiliary nursing care regardless of the title or the classification used.[38]

At the time the above reason for decision was issued, the Alberta Board had committed itself to the five-unit, functional approach in hospitals, one of these units being auxiliary nursing care. The strong stand taken by the Alberta Board in enforcing the use of this unit description may have been rooted in three "outside" influences. The continued separation of nursing aides and nursing orderlies, which resulted in different remuneration to individuals doing the same work, could possibly have been challenged under provisions of the Individual Rights Protection Act. A recent Board of Enquiry and the Supreme Court of Alberta had also both stated that, in their opinion, the two groups should bargain together and the Alberta Task Force on Nursing Education has recommended that schools for nursing aides and orderlies be combined since the work being done was virtually the same.[39] In the face of such evidence, the endorsement of separate units for Certified Nursing Aides hardly seemed logical, and auxiliary nursing care units were altered to suite the new policy at the Royal Alexandra,[40] Edmonton General,[41] and Hinton General[42] Hospitals, but a similar description change was blocked at the Misericordia Hospital[43] because the applicant wanted to include people in the unit whom the Board felt did not belong in such a unit. An application relating to the Whitecourt General Hospital[44] was made in the "where employed as" format, and it was altered by the Board before certification, as it was at the High River General Hospital.[45] In the latter case, the employer protested the use of the general unit description:

> We foresee a danger in the Ward Aides being in the same association as Certified Nursing Aides, in that the nursing aides can set standards and limitations for the ward aides which would make it impractical to employ them in the hospital.[46]

The argument apparently swayed nobody for a standard format unit for the hospital was approved and the firmness of the position of the Board on the hospital unit issue was illustrated in its comments regarding the fate of existing units as the new policy developed:

> While the Board is cognizant of bargaining relationships of long standing, such as those of the Operating Engineers in the hospital industry in general and with this employer in particular, as well as the relationships of Canadian Union of Public Employees #936 with this employer, the Board has, in recent decisions, sought to establish consistent and uniform units to avoid fragmentation and the multiplicity of units in the hospital industry. There are a number of small units within the hospital industry which are represented by various bargaining agents, and these units may not lend themselves to the units which the Board has deemed to be appropriate.[47]

The new unit for auxiliary nursing personnel did not always fit the existing bargaining structure. The Certified Nursing Aide Association, the Canadian Union of Public Employees, and the Service Employees International Union all had units made up in part by personnel who could be placed in a unit of auxiliary nursing personnel. At the Edmonton General Hospital certified nursing orderlies, operating room technicians, and psychiatric attendants were moved from a service employees unit to an auxiliary nursing care unit.[48] In the Edmonton Rural Auxiliary Hospital and Nursing Home District #24[49] it was found that CUPE and the Certified Nursing Aides could end up representing the same people, they would just have certificates for separate locations in the district; there would be, in effect, two bargaining agents representing identical groups of employees, dealing with the same employer. The similarity in unit structures was, in part, caused by the broader scope of the auxiliary nursing care unit.[50] The focus on job function rather than job title also influenced the structure of bargaining. In Wainwright,[51] several certified nursing aides could not be included in a unit with their fellow association members; they were working as lab technicians and were, by job definition, included in the paramedical-technical unit.

The problem of the bargaining status of non-professional nursing staff is conspicuous by its absence in the Ontario and British Columbia jurisdictions, and the reactive nature of the labour relations board function is likely the reason. In both jurisdictions there appeared to be no bargaining agent specifically interested in this particular group, whereas the Certified Nursing Aide Association in Alberta forced the Alberta Board to consider the group by requesting units composed of a part of the non-professional nursing staff. The position of the group, if examined closely, is an ambiguous one.[52] The group works closely with the professional nursing staff and is involved in direct contact with and the handling of patients. On the other hand, the group as a whole is considerably less educated than the nurses or many of the groups in the technical services of the hospital, and yet their mode of dress and other conditions of employment make it difficult to place them in the general service group. Part of the group even had its own association, and more importantly, the association was actively pursuing the group's interests in the field of labour relations. The auxiliary nursing care unit would appear to be a rather unique and successful response to the problems posed by the appearance of this group on the Alberta hospital labour relations scene.

Paramedical Personnel

The difficult position of the group.

The common thread tying

the Alberta, British Columbia, and Ontario Labour Relations Boards together, at least within the context of the hospital industry, was their mutual difficulty in deciding upon a course of action regarding appropriate bargaining units for that group of hospital employees contributing to the "inverted pyramid" structure of modern health care institutions. The group has been named a number of things: paramedical, non-professional technical, paramedical technical, technical support, and professional paramedical. These various names would indicate the difficulties encountered in actually framing a workable definition for the group as a whole. Many of the occupations are new to the hospital sector, and the placement of such positions in the hospital structure is not always clear. The Health Labour Relations Association of British Columbia recently summarized the rise of the paramedical group rather well:

> . . . A medical educator once remarked . . . that a basic hospital consisted of a patient, a doctor, and a nurse, and that all the newer specialties were little more than adjuncts to this triangular relationship. When one studies the historical evolution of the hospital organization, this statement takes on a greater meaning. Initially, the doctor provided the diagnostic and therapeutic leadership and the nurse served as the doctor's assistant in this milieu. Furthermore, the nurse provided the basic housekeeping, laundry, food service and other support services.
>
> As the hospital grew in size and became an essential social institution in the community, functional specialization first occurred in the support service sector. Hospitals established housekeeping, laundry, food service, stores, and other support departments staffed by employees specifically hired to perform these respective functions. Functional specialization in the support service sector appears to have reached a plateau and has stabilized.
>
> Functional specialization in the diagnostic and therapeutic sector evolved much more slowly at first and is continuing to evolve. Early in this evolution the nurse was relieved of the basic laboratory and X-ray functions she was performing, as the forerunners of the present day medical technologists and radiological technicians came on the scene. The appearance of other paramedical categories had a similar effect on the role of the nurse. This functional specialization in the diagnostic and therapeutic areas is still evolving today and is in part attributable

> to the advances of modern medicine. That this is so is partially demonstrated by examining hospital employment trends in the paramedical categories.
>
> In absolute numbers, and as a proportion of the hospital labour force, the older established paramedical categories who provide diagnostic and therapeutic services are increasing . . . .
>
> Another fact supporting the continuing specialization in the therapeutic and diagnostic sector is the continuing emergence of new paramedical categories of personnel. The student of Canadian hospitals will be hard pressed to find a child care worker, an orthotic/prosthetic technician, a psychometrist, a respiratory technologist, a speech pathologist/audiologist, a bio-medical engineer, an E.E.G. technologist or a bio-medical electronics technician in a hospital of some twenty years ago.[53]

The bargaining unit problem originated in the nature of the occupations themselves. Each of the occupations making up the group had, to varying degrees, progressed along the path to professionalization.[54] To some extent each group within the "group" utilizes a rather complex, codified and specialized body of knowledge; this knowledge was obtained in some fairly or extremely rigorous training program and it was applied quite successfully in solving specific problems in a way apparently suitable to society in general. Some groups had their interests represented by an association and some had even obtained statutory recognition, giving them legal authority to police the standards of and entrance into their respective "professions". In general, society had recognized to some extent the "separateness" of these occupations from the great occupational melting pot of the work force.

It is only natural, then, that those working in such occupations would expect their uniqueness to be recognized in the context of collective bargaining; after all, in seeking such a position they would be asking only for a stature that many crafts have had for a very long time (and their arguments for such treatment are often quite convincing).[55] Unfortunately, the fragmentation of bargaining that would result from such recognition was hardly in accord with the policy of labour relations boards, particularly in essential industries. The labour boards were thus forced to arrive at some compromise between the desires of the "para-professionals" and their own policies regarding proper bargaining structure.

The initial policy. The para-professionals in Alberta were, before 1972, generally excluded from requested all-employee units. At the Misericordia Hospital[56] dieticians, lab technicians, lab biochemists, pharmacists, and X-ray and lab technicians were among those excluded from the all-employee unit. At the Royal Alexandra Hospital[57] the dietary technicians were excluded from an all-employee unit at their request, while at the Claresholm Municipal Hospital[58] certified lab technologists and certified radiology technologists were specifically excluded from the unit.

In British Columbia, technicians and para-professionals were also excluded from all-employee units,[59] and segments of the group were not regarded as appropriate bargaining units.[60] The British Columbia Board did, however, commit itself to a unit of para-professionals, but the vagueness of the term made it necessary to include the names of the occupations the unit was supposed to include:

> Para-medical professional groups including physiotherapists, medical record librarians, dieticians, medical social workers, hospital pharmacists, occupation therapists, remedial gymnasts, radiological technicians and medical technologists at Kelowna General Hospital.[61]

In Ontario, all-employee units excluded pharmacists (graduate and undergraduate), dieticians (graduates and students), and technical personnel, the latter group comprising those occupations also excluded by the Alberta and British Columbia Boards.[62]

The Alberta Board was considerably more active in the hospital and health care sector during the period 1972 to 1976. The policy of excluding technicians from all-employee units was again followed in the case of the Salvation Army Grace[63] hospital, but the changing nature of the occupations to be excluded was acknowledged by the addition of a "blanket" exclusion based on certification and education ". . . and other certified paramedical technicians and students receiving practical training as part of a course leading to certification as a paramedical technician." The appearance of an all-inclusive unit is foreshadowed in the comments made by the Board in rejecting a unit of lab technologists at the Calgary General Hospital:

> It was the opinion of the Board that certification of individual groups of certified or registered medical technicians in a hospital would result in fragmentation and the Board considers that a multiciplicity of units in a hospital in this area is not in the best interests of all parties concerned, including employees.[64]

The divided unit concept. The concept of the all-inclusive, paramedical unit was thoroughly debated in the Misericordia Hospital case.[65] The applicant requested a unit that included all the occupations that could be construed as belonging in a unit seeking to include all paramedical personnel. The employer protested the configuration on a number of fronts. It was claimed that many of those in the occupations listed did not wish to belong to such an all-inclusive unit, and that these feelings shed some doubt on the claim of majority support that the applicant had made. It was also pointed out that the pharmacists were already in a unit of their own, that the Psychiatric Nurses should be grouped with auxiliary nursing personnel, and that two classifications that should have been included in the unit (operating room technicians and mortuary technicians) were not. Representations were also made by specific paramedical groups, including the pharmacists, dietary technicians, dieticians, medical psychologists and physiotherapists. These groups disputed the appropriateness of the unit on the grounds that there was little community of interest within such a group, that they were too professional to be included in such a group,[66] that the disparities in educational backgrounds within the group were simply too great; that they were satisfied with the representation they had received from their own associations and that including them in such a unit would conflict with other legislation that gave them the right to manage their own affairs without outside interference. If the Board were to recognize such arguments and grant the requests of each group "it would result in situations whereby up to perhaps twenty certified bargaining units could be established in the paramedical area alone, placing the hospitals in an untenable situation with respect to collective bargaining."[67] In resolving the conflict the Board divided the unit on the basis of education. Those who were educated in a technical school, such as medical record librarians, remedial gymnasts and respiratory technologists, were left in the unit. Those who needed a "formal university education" were excluded from the unit. This included pharmacists, physiotherapists, psychologists and occupational therapists. The Board also noted that the latter groups had strongly indicated their desire to be excluded from the group, an indication of the lack of community of interest they had with their less-educated fellow employees.

A similar approach was used in the Rockyview General Hospital[68] and St. Michael's Hospital cases.[69] Units of technically trained personnel were created at each location using type of education as the criterion for inclusion or exclusion. The use of such a criterion divided the paramedical group into a technical portion and a professional portion,[70] which appears to be a departure from the original intent of having a single paramedical unit.

The Board policy of creating "technical" units continued unaltered into 1973. The Health Sciences Association obtained similar units at the Holy Cross Hospital,[71] Claresholm General Hospital,[72] Red Deer General Hospital,[73] and the Edmonton General Hospital.[74] In the latter two cases, the employer objected to the unit description on the grounds that some of the classifications listed had not been filled at the time of the application and to include said classifications in the unit without any hearing for those who might fill the positions at some later date was a denial of natural justice. The argument was based on the premise that the occupational names were particularly useful in such cases, and since this assumption had already been rejected by the Board through its reliance on factors other than occupational classification for unit determination purposes, the argument carried little weight. The Board appears to have kept a close watch on the educational backgrounds of those seeking admission to particular units. At the Salvation Army Grace Hospital,[75] a Microfilm Clerk/Radiological Technologist was excluded from a unit of technical personnel: the position required no formal training and the Board reasoned that, despite the occupational title, the classification was more suited to a general support services type of unit.

The case record indicates that the last two years covered by this study were characterized by a consolidation of the Board's policy regarding the separate units for technical and professional paramedical personnel. In order to get individuals in the proper units, shifts had to be made in the unit structures of other bargaining agents,[76] and in 1976 the unit descriptions were shortened to "paramedical technical" and "paramedical professional",[77] but the policy of including all technical personnel in a single unit remained firm. At the Medicine Hat and District Hospital[78] the Ambulance Personnel Association sought to have the Board certify a unit of emergency medical technicians and paramedical personnel. The Board ruled that the functions of said individuals did not differ enough to warrant their separation from other hospital paramedics and the application was turned down. The Board pointed out that such a unit as that proposed in this instance was fragmentary in nature and contrary to established Board policy.

The approaches taken to the problem of the status of the paramedical personnel in Ontario and British Columbia do not wholly coincide with those taken by the Alberta Board.

The commitment of the BCLRB to a single unit for paramedical personnel continued unaltered. Such personnel were excluded from all-employee units [79] and put in a single unit of their own.[80] No division was made within the paramedical group and fragments of the group do not appear as certified bargaining units. The position of the Ontario Board from 1972 to 1974 is not as well defined as that of Alberta or British Columbia. In the early part of this period, "technical personnel" were excluded from all-employee units, and often lengthy clarification notes were attached to specify what groups were covered by the exclusion.[81] The more "professional" groups such as dieticians and physio- and occupational therapists were commonly explicitly excluded in the unit description. The Ontario Board did, however, certify units that included small parts of the overall paramedical work force. Medical laboratory technologists were occasionally placed in their own unit[82] as were X-ray technicians,[83] ordinary lab technicians and their assistants,[84] and radiological technicians.[85] Groups of a few paramedical occupations were also certified.[86] The policy of the Ontario Board appears contradictory. The paramedical group is excluded under the blanket term "technical personnel", yet splinter groups are recognized as appropriate for collective bargaining. This contradiction begins to disappear in 1974 as the Ontario Board begins to follow the policy used in British Columbia, namely a single unit for paramedical personnel. In the Sunnybrook Hospital case,[87] the Board turned down a unit of medical laboratory technologists, a unit that was certified in previous cases (which was one of the points raised by the applicant). In explaining its reversal of policy, the Board noted that in a recent case the Board had stated that "in future there should be a broader bargaining unit in hospitals which would encompass all paramedical technicians."[88]

In the St. Vincent Hospital case[89] the Board received an application that included most, but not all, of the paramedical personnel at the location in question. The unit was certified, but the following comment indicated the likelihood of the same unit being granted again:

> In accepting the agreement of the parties with respect to the appropriate unit, we feel we must express our concern with such a bargaining unit and we must emphasize that this must in no way be accepted as a precedent for the appropriateness of such a bargaining unit. The whole matter of bargaining units in hospitals has caused much concern for this Board and the matter is currently under review.[90]

At the Greater Niagara General Hospital the Health Sciences Association attempted to gain certification for another narrow unit of paramedical personnel with the following results:

> We can see no merit in the applicant's argument that the appropriate unit should be limited to a specific number of occupations within the remaining group of employees in the respondent hospital. To accept the position of the applicant would merely increase the number of bargaining units in what is clearly an overly fragmented situation at present.[91]

While the Ontario Board was developing its new hospital unit policy, the British Columbia Board was clarifying the boundaries of the one large unit it was committed to, much as the Alberta Board clarified the boundaries of the technical unit during the same time period. In the case of Surrey Memorial Hospital,[92] the British Columbia Board was asked to rule on the question of whether food service supervisors were paramedical personnel or not. The question was decided in the negative, a major reason being that such personnel operated in many non-medical institutions, while those in the paramedical group were related directly to hospitals and health care.

All the relevant arguments concerning the question of the type of unit appropriate for paramedical personnel were voiced in one form or another in the case of the Stratford General Hospital[93] in Ontario. The Public Service Union sought a unit of all paramedical personnel, while the Association of Allied Health Professionals sought a narrower unit.[94] The Board acknowledged that it was being asked to decide upon the "appropriateness of one or two paramedical bargaining units" for bargaining purposes in hospitals.

The Health Sciences Association asked the Board to recognize two separate units on the grounds that:

1. quality and extent of education varied tremendously within

the group,

2. the quality of supervision and control exercised by the professional associations of the occupations in the group varied tremendously,

3. there were large differences in the extent of and type of patient contact exercised by the various occupations, and

4. some groups had a far greater amount of discretion in performing their work than others.

The usefulness of educational status as a unit determination criterion was soundly rejected. It was felt that in many cases the education requirement was artificially high and the learning too far divorced from the actual work. The Board also did not want to place too much weight on a factor that could be manipulated by those seeking to enter the "charmed circle" of recognized professions. The difficulty in comparing the usefulness and quality of various types of education also caused the Board to avoid using education as a criterion.

The fact that professional associations were common within the group eliminated their usefulness as a distinguishing criterion, and the validity of the patient-contact criterion was called into question by the inclusion, in the Health Sciences application, of pharmacists, dieticians and medical records librarians, none of whom had any direct contact with patients. The differences in level of discretion were not great, it was reasoned, in light of the fact that all the groups in the unit were, above all else, subordinate to the medical doctors. (The conclusions arrived at by the Board were based on a detailed analysis of the actual functions of each occupation. This information was supplemented by submissions from the parties and questioning of representative individuals at Board hearings.)

The Health Sciences Association tried a different approach in the face of the Board's disposal of their initial argument by holding that those in the proposed unit were part of a "health care team" that made them a logical grouping for collective bargaining purposes. This approach also failed. The Board felt that all the paramedical occupations were functionally interdependent for labour relations purposes, and the fact that some spent more time working with or consulting with doctors was not deemed significant.[95] The newness of the team concept and its general experimental nature also made it a rather shaky base for a collective bargaining relationship.

The Ontario Board came out solidly in favour of one unit for the paramedical group and the certified unit closely parallelled that applied for by the Public Service Employees Union. The Board specifically stated that the common subordination of all members of the group to the physician in charge of a particular patient outweighed whatever other real or artificial differences may have existed between the groups.

A casual perusal of the present position of the three labour Boards would indicate that the Alberta Board has accepted the professional-technical division within the paramedical unit while the Ontario and British Columbia Boards have not, and to a certain extent this is true. Closer examination reveals, however, that professional and technical people are, or likely will be, treated separately in Ontario and British Columbia. The paramedical unit in British Columbia is made up of the nine "founding occupations" of the Health Sciences Association, and, as indicated by the Kelowna Hospital Society case,[96] it is likely going to be difficult for other paramedical groups to gain a foothold in this group. The Health Employees Union Local #180 is active and well established in the province and it appears that it will continue to represent many of the less "professional" people, in effect, creating a split between the two groups. In its concluding comments to the Stratford General Hospital case, the Ontario Board noted that several of those included in the unit might still be subject to the provisions of section 1(3)(6) of the Act (this being the allowance for exclusion because of managerial or confidential activity). Pharmacists, dieticians, and medical records personnel were listed as possibilities. If this were to occur there would be, in effect, a split between the two groups with some of the professionals being unrepresented, at least in an official sense. The case record to date in Alberta indicates that although there may be two "official" units, there is in effect only one active unit. Several examples have been cited where units of a paramedical technical nature were created, but none in which a paramedical professional unit was certified.

It appears, then, that where the "official" policy is one unit for paramedical personnel, there may develop a split roughly along the lines of professional-technical personnel. Where the stated policy is a recognition of a division in the paraprofessional group, it appears that only the technical members of the group have taken an interest in the official unit structure.

It will be interesting to observe the development, or lack thereof, of "official" bargaining structures in the paramedical field. The labour relations boards have examined the situation carefully and have committed themselves to a course of action. Whether this course is a natural and logical one, given the interests and attributes of the workers involved, or an imposition of an already-established public policy bias, is yet debatable.

Support Personnel

A more stable situation. The bargaining structure associated with the support services in hospitals was much more stable than that surrounding the auxiliary nursing care and paramedical personnel. It was mentioned earlier that the functional specialization that now characterizes the hospital industry "first occurred in the support service sector," and that "functional specialization in the support service sector appears to have reached a plateau and has stabilized."[97] One would not expect, then, to encounter a great many noteworthy decisions relating to the support services, and this was indeed the case. (In most instances, the support services group of laundry, maintenance, and food personnel became involved only as a reaction to a situation developing in relation to paramedical or auxiliary nursing care personnel.) But this group of people is by far the largest single bargaining unit in the health care sector and, therefore, any activity relating to this group is of interest here.

The support unit in Alberta was usually described, prior to the use of standardized units, in the form of what may be termed a "fall-out unit". The unit description begins with the phrase "all employees except" and all those specifically exempt from the unit were listed. The "fall-out" after this list were those in the unit:

> All employees except sisters, department heads, chief accountant, supervisors, foremen, dieticians, personnel manager, personal secretaries, purchasing agent, credit manager, matrons, chief librarian, lab technicians and assistants, all students, lab

> biochemists, social service secretaries, pharmacists and assistants, operating engineers, registered and practical and graduate nurses, certified nursing aides, nursing orderlies, X-ray and lab technicians, lab secretary and lab typist, medical steno and payroll clerks.[98]

A virtually identical practise was followed in Ontario,[99] and the same result was obtained in British Columbia with a much shorter unit description.[100] The maintenance employees in a support unit, however, are likely to be tradesmen with a tradition of separate craft reprsentation (plumbers, carpenters and the like are occasionally part of a maintenance unit in a large hospital), and there was therefore intermittent pressure for separate units. Stationary engineers traditionally received separate representation, largely due to their separation in the power plants of hospitals, but the policy of the Alberta Board during the time frame of this study was to discourage the formation of units for any part of the support services group and to favour all-inclusive units. At the Salvation Army Grace Hospital the Board refused a unit of steam engineers and maintenance personnel on the grounds that "such a unit comprises a fragment of an overall group of employees which fall within the jurisdiction of the applicant trade union"[101] and at the Rockyview General Hospital an attempt to add carpenters and electricians to the existing unit of steam engineers also met with failure.[102]

The policy of the British Columbia Board during this period appears more flexible than that of the Alberta Board. The traditional position of the steam engineers was occasionally recognized,[103] and even other craft groups could receive a separate unit,[104] but similar units of stationary engineers and maintenance employees were also rejected as inappropriate.[105] In Ontario the "all employees except" form of unit was still frequently certified,[106] but here, too, it was apparently still possible for stationary engineers to gain separate recognition.[107]

Housekeeping activity. More recently, activity in Alberta regarding support services has been largely of the "housekeeping" variety as it became necessary to clarify the boundary between the new paramedical technical units and the general support services units. At the Misericordia Hospital an electronics technician was ruled part of the support services unit,[108] and at the Beaverlodge-Hythe General Hospital the support services unit was altered to reflect the new paramedical unit,[109] while in several locations units described in the new format of general support services were certified.[110]

The reported cases in Ontario and British Columbia are devoid of any major difficulties in the area of support services.[111] In the case of Riverdale Hospital,[112] the Ontario Board rejected an attempt by the Health Sciences Association to "raid" an existing "all-employee" unit and thereby confuse the already fuzzy boundary between the two groups, and in the Surrey Memorial Hospital case[113] the British Columbia Board had to decide whether food service supervisors were to be included in the Health Sciences unit or the more general Hospital Employees unit. Such activity in all three jurisdictions does not reflect any major changes in the support services structure, but rather the shifting unit structure in the rest of the hospital, in particular the paramedical portion. The BCLRB viewed the service and support group as follows:

> The service and support aides of a hospital do appear to conform to the industrial model.[114]

The preceding comment by the British Columbia Board appears to place the support services in their proper light. The nature of the work, the education levels of those involved, and the superior-subordinate relationships are all similar to those found in the more familiar industrial sector. There are not as many complicating factors impeding the application of traditional criteria in this area and thus the potential for difficulty is greatly decreased. Labour boards have vast experience in handling similar situations and, in some instances (stationary engineers), the importance of tradition makes it unnecessary to make any precedent-setting considerations at all.

Direct Patient Care

A well established group. The granting of separate bargaining units to nurses is a well-established practise in Alberta, British Columbia, and Ontario and it is a practise that did not change during the period of time considered here. Through their orientation and conduct nurses have attained the status of an acknowledged profession and there is no evidence to suggest that the labour relations boards considered treating nurses as anything else for collective bargaining purposes. The nurse was part of the original "triangular relationship" in hospitals and changes in the hospital work force structure do not appear to have altered the "privileged" position of nurses.

Any problems the Alberta Board did encounter with the nursing units[115] originated in either some peculiarity of the internal training and organization patterns of the nurses themselves, or in the organization of the institution in which the nurses were operating, with neither factor apparently directly related to any ongoing development (unlike the situation with the paramedical groups). This writer thought that institutional settings could have caused some problems in Alberta, and when considered carefully, it is not suprising. The large paramedical and support groups are found in large, well-equipped hospitals. Such establishments have the need for and funds for acquiring such people. The services of the nurse, however, while certainly vital to larger institutions, are also required in a number of other settings, in particular smaller hospitals, nursing homes, and public health units. These smaller institutions bear only a slight resemblance to larger hospitals and, thus, it is not unreasonable to expect that a bargaining structure suitable to nurses in a large hospital would likely be only marginally applicable to these smaller entities.

The available data does not support the preceding argument. In the Blunt's Nursing Homes case of 1967,[116] and the Baptist Haven of Rest case of 1969,[117] the Alberta Board refused to separate the nurses from the all-employee unit, but in all other cases, whether they involved nursing homes,[118] health units,[119] or a privately operated nursing operation,[120] the nurses succeeded in obtaining separate recognition and/or were specifically excluded from other units. The active nurses association in the province and membership identification with the association rather than the particular institution, apparently offset the effects of the scattered "few in any one place" nature of the nursing work force in these smaller institutions.

This practise was also apparently followed in Ontario and British Columbia. Sack and Levinson indicate that it was, and is, common practise for nurses to be granted their own units in health units and boards of health institutions,[121] and similar practises appear to exist in private sector nursing.[122] No evidence could be found to contradict the assumption that nurses occupy a similar position in British Columbia,[123] an assumption made on the basis of their similar position in hospitals in relation to both Alberta and Ontario nurses.

Some nomenclature problems. The Alberta Board also encountered some difficulties related to the internal workings of the nursing organization and education system. There are not just "nurses", but nurses who are "registered", nurses who are "graduate", and nurses who are unregistered or still students, but perform most of the functions of full-fledged nurses. It was not always clear what caption should be used for nurses when actually granting them a unit, or when excluding them from another unit. At the Westhaven Nursing Home, the Board deleted "registered" nurses from the list of exclusions and instead used "graduate" nurses,[124] while at Blunt's Nursing Home, the term "registered" was allowed to stand,[125] despite objections from management that it could then be implied that graduate nurses were not excluded from the all-employee unit. At Lac La Biche General Hospital, the word "registered" was again waived in favour of "graduate", with the following comment:

> The Board considers in determination of an appropriate bargaining unit that a unit limited to registered nurses may have the effect of leaving without representation certain employees with similar communities of interest. . . .The Board further notes that in practise graduate nurses have been represented within the scope of collective bargaining.[126]

At N.B. Cook Nursing Homes, no adjective at all appeared, the phrase "nurses" apparently being clear enough.[127] At the Two Hills General Hospital, the Board again used "registered" with an addendum to the effect that those eligible for registration were also included in the unit;[128] this phrase apparently allowed others performing the same functions to enjoy bargaining privileges. It was then pointed out to the Board that the constitution of the nurses association only allowed for the representation of the interests of "registered" nurses, and the fact that the association was representing non-registered and graduate nurses in many locations in the province did not necessarily give it the authority to do so under the Labour Act. These people were not admissible under the association's constitution. In order for the certified unit and the bargaining agent's constitution to coincide, it was necessary to use only the word "registered" in the unit description and, thus, many unit descriptions for nurses were altered.[129] The association continued to represent graduate and unregistered nurses voluntarily, but such groups were no longer included in the "official" bargaining unit.[130]

This nomenclature problem does not appear to have caused any similar difficulties in Ontario or British Columbia. Data from British Columbia indicates that the words "graduate" or "registered" were usually applied to nurses,[131] and in Ontario, the common phrase appears to be "registered and graduate nurses" thus eliminating any doubt about who is to be included in the unit.[132]

The bargaining unit status of the Psychiatric Nurse also appears to have been a matter of some concern. At the Misericordia Hospital, the employer insisted that the Psychiatric Nurse did not belong in a paramedical unit but rather in a nursing unit.[133] This argument was dismissed, as it was at the Wainwright General Hospital,[134] on the grounds that the status of the nurses in previous collective bargaining indicated that they did not properly belong in the direct nursing unit.[135] The status of such nurses is also clouded by the fact that they have their own governing legislation: _The Psychiatric Nurses Association Act_. This fact would seem to indicate that they are a fairly distinct group. On the other hand the Act provides for the involvement of registered nurses in the training of psychiatric nurses, which would seem to indicate a community of interest between them. There is no evidence to suggest that this matter has been fully resolved one way or the other.

Students and teachers. An issue was also raised concerning the position of nurses involved in the training and education of other nurses. At the _Holy Cross School of Nursing_,[136] the Board was asked to certify a unit encompassing the academic staff. The employer opposed the proposal on the grounds that the certification would cause unit proliferation at the hospital, that those in the unit had a community of interest with other nurses and should bargain with them, and that similar people in other teaching hospitals were customarily placed in units with other nurses. The Board certified the separate unit despite the employer protest on the grounds that those involved were not tied to a particular institution, but were employees of the hospital district and that these people functioned totally in an educational capacity and had nothing to do with direct patient care or other hospital services. The Board also pointed out that these people performed functions that were related to institutions outside the hospital district which gave them still less community of interest with nurses working in a particular institution.

The need for "on-the-job" or "on-site" educational experience and the resultant intermingling of student, teacher, and regular employee within a single institution also created some difficulties in British Columbia. At the Cranbrook and District Hospital,[137] the British Columbia Board was required to decide on the unit status of Student Practical Nurses, the presence of whom, in an unorganized form, the Nurses Association regarded as a threat. The Board recognized these fears:

> From the point of view of the trade union, the issue is whether the activities of the student practical nurse threaten the job security of its members and dilute its bargaining strength.[138]

The Board did not, however, sympathize with the "threatened" nurses, but instead ruled that the student nurses were not employees of the hospital, making it impossible to include them in any hospital-based unit like that of the regular nursing staff.[139]

The position of the nursing unit as the single "professional" bargaining unit in the hospital was also altered in British Columbia. The certification of professional house staff at St. Paul's Hospital[140] marks the official appearance on the scene of a new group within the structure of collective bargaining in hospitals (within the scope of this study). The case was a complex one requiring the Board to closely examine the partially student, partially employee, position of each of the proposed members of the unit (interns, residents, and fellows) while also comparing their status to other hospital personnel of the same educational level[141] and simultaneously considering the importance of the group as a whole to hospital operations. The importance of this group was noted by the Board as follows:

> This house staff, with that kind of training and qualification, is to all intents and purposes the only medical staff engaged in full-time work in the hospital and in effect act as the primary physicians on the wards and in emergencies.[142]

The importance of the group to the smooth operation of the hospital and the existence of a collective agreement along with the past record of the group[143] led the Board to the conclusion that stabilizing this potentially disruptive group through official recognition was more important than the increased unit fragmentation that would result from the creation of another separate health care unit. The Board philosophically commented that the Provincial Association of Residents and Interns would not disappear just because of a denial of the application for certification, and that it was wiser, in the interests of stability, to certify the group in order to make future operations as smooth as possible.

The nurses were clearly the most stable and trouble-free bargaining group in the hospital sector. Their traditional claim to separate representation was never challenged, with the difficulties associated with the auxiliary nursing personnel being more in relation to that group's position vis-a-vis the paramedical group than in relation to the boundary of the direct nursing group. The actual structure of the nurses collective bargaining arrangement in Alberta, at least as defined by official bargaining units, remained constant.

The crucial decisions made with respect to the paramedical personnel would appear to be at the core of the development of the standard five unit approach used by the Alberta Board. Though blessed with new unit titles, the basic format of the direct nursing and support personnel bargaining structures changed little. There was some activity at the fringe of the support services unit, and not even that in regard to the nursing unit. It was at the grey areas surrounding auxiliary nursing care and para-professionals that the decisions were made: the three units created in this area did reflect a new structure and the reasons for decision issued by the Alberta Board repeatedly stressed that the approach taken in this area would stress "functional contribution" to the institution in question as the critical variable in the unit determination question.

As defined, the functional approach would appear to be a very narrow concept. If applied rigidly, it would ignore past activity; things like education obtained in past years, bargaining arrangements in past years, and legislation passed in previous years would theoretically give way to the actual present situation. Outside influences would also have to be ignored. Relationships of individuals through associations and the agreements between associations, whether work oriented or not, would have to be ignored. The primary consideration would have to be the actual day-to-day working or job function and its related interpersonal arrangements. The unit must be defined in light of the actual existing work situation only.

The application of a single criterion or doctrine in unit determination matters is usually ill-advised. The situation is a shifting one; differences exist between cases, and cases themselves are only handled at one point in the development of the relationship between the parties involved. To try to force one concept to work for all cases, both now and in the future, would hardly promote the stability so ardently desired in the hospital sector. It is not surprising to find, then, that other factors have, and no doubt will continue, to be considered. Education and the different perspective it can give to an individual and, in turn, to his perception of the collective bargaining process, was clearly a major factor in the development of two bargaining units for the paramedical personnel. Tradition and past practise played a clear role in the continued status of nurses in health care in general, overriding the differences apparent in the various types of institutions they are found in.[144] But the functional approach is also applied. The support services are treated as a group on the basis of their contribution to the institution, despite traditions of separate representation in some cases, and in a previously cited case, those clearly in an association based in the auxiliary nursing sector were placed in the paramedical technical unit because they were performing just that kind of work.

In general, special cases would still appear to warrant special consideration with the five unit functional approach providing a framework within which the ultimate goal of stability is sought, but at the same time allowing for much-needed flexibility.

The Status of Office Staff and Supervisors

Department heads and professionals. The nature of the health care industry and, in particular, the large health care institution, is such that the question of managerial and confidential exclusions is made particularly difficult. The complexity of the large institution itself, with its many departments and services, and the tremendous differences in the education and function of those in the work force combine to complicate the task of determining who, in fact, acts in a managerial capacity. The form and degree of "managerial" tasks vary tremendously between groups, from the more easily identified and rather straight-forward relationships in the service departments to the more subtle and harder-to-analyse relationships that exist among the professionals and paramedical personnel. The two lines of authority at work in most health care situations also cloud the managerial question. Administrative authority and medical authority are in operation simultaneously in such establishments, with overlaps and "grey" areas not uncommon.

The disparity in management styles and functions between departments in health care institutions is exemplified in the varying status granted to department heads. Two major cases in British Columbia in recent years are excellent illustrations. In the case of Victoria General Hospital,[145] the British Columbia Board considered the status of the heads of the various paramedical departments in light of a previous decision in which they had decided that such people were within the meaning of the word "employee" as contemplated by the legislation. In its thorough examination of the evidence, the Board noted that all but one of the department heads were qualified in their respective fields, that some of the departments operated with and under the advice of a patient's doctor while others were under the direct authority of the hospital administration, that there were tremendous differences in the sizes of the various departments, and that those working in the departments "required very little in the way of traditional management, as opposed to the expert professional assistance which they do regularly receive from the department head."[146] The Board, cognizant of the requirements of the statute, decided that the function of the department heads was not primarily the management of other employees, but "the exercise of professional competence and knowledge in the technical functions of the department."[147] They were coordinators, not managers, and as such were not beyond the coverage of the statute.

In Victoria General, the British Columbia Board stated that it hoped the case would be used as a precedent regarding the status of department heads, but the applicability of the decision to departments other than those paramedical was questioned in the Royal Inland Hospital case,[148] in which the status of department heads in the support services group was considered. The evidence indicated that these department heads did perform many of the functions usually associated with managerial personnel. They were involved in hiring, promotion, and firing. They handled the first stage of the grievance procedure, evaluated those under their control, decided upon method and allocation of work and, in some cases, regularly participated in management meetings. The Board concluded that, in general:

> Very little time, if any, of the five department heads is occupied by work similar in nature to that performed by employees within the H.E.U. bargaining unit and under their direction. . . . Rather, the day-to-day energies of the department heads are directed towards running their departments as efficiently as possible and ensuring employee productivity.[149]

Real managerial activity, then, appears to vary depending on the department and also, likely, on the peculiarities of the institution under consideration.

The Alberta Board seems to have taken the most flexible course by treating the managerial question as a "case specific" determination, rather than attempting to classify a group like department heads as generally managerial or non-managerial. At the Wainwright General Hospital,[150] department heads were excluded from the requested unit as they were at the Elizabeth House Guild[151] and the Claresholm Municipal Hospital,[152] but at the Breton General Hospital they were included in the unit because "the department heads affected by the application did not exercise sufficient managerial functions to be excluded from the bargaining unit."[153] Similar inclusions were made at

Red Deer General Hospital[154] and at Chinook Nursing Home Ltd.[155] The data examined did not reveal any pre-disposition towards including or excluding department heads from any particular part of the health care operation, which indicates a seemingly more logical response to the patchwork quilt structure of the health care industry than any attempt to rigidify or standardize the question. This approach would seem to parallel that taken by the Ontario Board, an approach that recognizes the potential difficulties inherent in the situation while also trying to avoid rigidity. Sack and Levinson summarized the position of the Ontario Board:

> The Board's task of distinguishing managerial personnel from employees has been made more difficult in recent years by the growing sophistication and complexity of industry and the increasing skills and qualifications of non-managerial technical employees. In order to fulfill its task, the Board has distinguished between technical expertise on the one hand and decision-making on the other. In applying this distinction the Board has asked whether the person in issue controls or determines the process or merely implements a process which has been predetermined, whether such person formulates policy and exercises independent discretion in areas that are not circumscribed or merely gathers information and recommends a course of action. In making a determination on the status of such person the Board will consider the viewpoints of management, the person in issue and other employees, as well as the nature of the industry and the employer's business and scheme of organization. The relative position of the person in issue to the hierarchy of management and the potentiality of a conflict of interest are factors the Board will take into account. Finally, while the criteria for determining whether a person is managerial are the same for professional or non-professional personnel as for production workers, it has been said that the application of the criteria differs, as a direction given by a professional may issue from him not in his managerial capacity, but in his professional capacity.[156]

In larger health care institutions there are a large number of individuals involved in the direct nursing function, a function recognized as vital to the operation of the facility.[157] Those responsible for the conduct of the nursing staff are thus likely to hold rather important positions in the administrative hierarchy of the hospital. But these people were also usually licensed members of their profession and members of the professional associations. The stage was again set for a difficult situation regarding the managerial status of professional personnel.[158] The dual loyalties and duties held by many senior nursing personnel, to both their profession and its ideals and to their employer, made the conflict of interest question unusually difficult. Barbara Schutt has commented on the position of nursing supervisors:

> On the one hand, a director of nursing may be regarded as top management in the hospital hierarchy. But, as a nurse, she has a natural loyalty to her nursing colleagues and the profession.
>
> A director's ultimate responsibility is after all to assure a setting in which the nursing staff will be as productive as possible. She cannot be the official spokesman for "nurses" as individuals, for that person can only be elected by them. But she is management's choice as the representative of "nursing". That her philosophy may not always be in complete accord with the hospital administration is obvious, for she, just as the chief of the medical staff, represents a different dicipline. Her task is to speak and work for nursing. When she fails to do so, she fails both employer and nursing.[159]

The question of the bargaining unit status of senior nursing personnel has been prominant in the case record of the Ontario Board.[160] In the Toronto East General case,[161] the employer objected to the inclusion of assistant head nurses in the nurses' bargaining unit. The Board decided that the assistant head nurse was not performing managerial functions and could rightfully be included in the bargaining unit. The Board garnered support for its position from several factors. Much of the activity of those in question was related to their exercise of professional, not managerial, functions. The type of supervision was less extensive and more subtle than that found in the blue-collar setting. The assistant head nurse did not "control" people so much as "coordinate" them; a coordination required because of the interdependency of functions in the health care environment, but still a function that was more "professional" than "managerial", and thus one that need not cause any conflict of interest difficulties. The Board commented on the difficulties encountered in such situations:

> In a word, the complexities exerted upon the decision making process by the reliance of hospital management on technical information provided by employees who perform professional functions to a great extent has blurred the demarcation line of the exercise of managerial functions. Nevertheless, what can be discerned in attempting to pinpoint the exercise of traditional managerial perogatives in this particular white collar setting is that the mere exercise of professional skills by an employee and the interaction of these skills with other employees in the bargaining unit will not necessarily deprive that employee of rights of representation for collective bargaining purposes. The Board's task in determining the managerial issue is the examination of the duties and responsibilities of disputed persons to ascertain whether a conflict of interest exists with bargaining unit employees that would nullify their effectiveness should they be placed in the bargaining unit.[162]

The status of the head nurse was questioned in the St. Peter's Hospital case[163] and here, too, it was decided that, although those in question exercised professional skills, their managerial functions relative to other employees did not create any conflict of interest problems. The Board commented on the lack of effective control:

> The head nurse does not exercise any effective control over the future employment status of any person in her ward. Indeed, she does not attend meetings of management where labour relations matters are discussed.[164]

This controversy over senior nursing personnel does not appear to have spilled over to any great extent into Alberta.[165] The standard direct nursing care unit usually includes all personnel "up to and including the level of head nurse."[166] with adjustments occasionally made in nomenclature to reflect peculiarities in the institution in question. The parties themselves have apparently reached some understanding within the context of this fairly standardized unit, for it seems that the Board is rarely called upon to adjudicate over the status of nurses. In the case of the Calgary Local Board of Health,[167] the Board was asked to rule upon the status of Public Health Nurse III, Public Health Nurse II, and Assistant Director of Nurses. In this case, the Board applied the standard criterion used in managerial exclusion questions to decide that only the Public Health Nurse III was performing managerial functions. At the Vegreville Health Unit,[168] the senior nurse was excluded for similar reasons and the exclusion was still operative after the job title was changed to "Supervisor of Nurses".

Health care office staff. In the health care industry all employees except those in the more mechanical sections of the support services group could be fairly well classified as white-collar workers. In this sense, then, there is nothing particularly distinctive about the office workers in hospitals as indicated by this statement from the BCLRB:

> It has been the practise of earlier labour relations boards in British Columbia to view office units as appropriate units separate from plant units. In the common industrial enterprise the distinction between office personnel and other personnel can quite readily be discerned. In an enterprise such as a hospital, it is not easy to delineate the classical distinctions surrounding office staff.[169]

The fact that many office workers may exercise technical or professional functions is also not a distinguishing characteristic since many people in the hospital do so. The argument that the group is clearly distinguishable because of a closer or different relationship with management is clearly suspect here since their relationship is only with part of management, that concerned with "administrative" matters. There is also the equally important "medical" management team in the hospital, with whom many people come in regular contact without being part of a classical "office staff" unit or being in any way associated with the term "office staff". What does distinguish hospital office staff from most other employees is their minimal contact with any patients. They are not involved in "patient care", but rather in such matters as would be the concern of the normal office staff in a large company (budgeting, financial accounting procedures, billing, ordering of and paying for needed materials). This lack of a patient-oriented interest, along with a tradition of separate recognition, is a strong argument in favour of separate collective bargaining status, and such desires are clearly contrary to Board policy regarding unit fragmentation in health care. Since the office staff is part of the authority structure in the hospital, questions also arise regarding the managerial and confidential nature of some of those in the group. Whether office personnel are granted their own unit or not, there still have to be rulings on the "employee" status of certain individuals.

The Alberta Board policy regarding hospital office staff appears to lean towards only excluding those employed in managerial or confidential positions, while including the rest of the staff in the all-employee or support services unit. It also appears to have become more difficult in recent years to obtain any blanket exclusions for office staff. At the Good Samaritan Auxiliary Hospital,[170] the Board excluded all administrative staff. The employer had argued that the office staff was so small that confidential information was shared among all those employed and that counterproductive "mistrust and uneasiness" would result if the group was allowed to join an all-employee unit. Similar arguments were voiced by the employer in the Wainwright General Hospital case,[171] with similar results, and at the

Westhaven Nursing Home,[172] provisions were made for the exclusion of the administrator and the payroll clerk who were, in fact, the office staff at that time.

The reference to "administrative" staff was apparently too ambiguous for it gave way to more specific exclusions that did not threaten to leave out all future additions to the office staff (as did "administrative" exclusions), or to specific references to exclusions based only on managerial or confidential labour relations functions. At the Misericordia Hospital,[173] pharmacists exercising managerial functions were excluded from a unit of pharmacists, and at the Rockyview General Hospital,[174] "managerial" personnel were left out of the unit. At the George McDougall Memorial Hospital,[175] the administrator alone was excluded from an all-employee unit, as was the case at the Smokey Lake Nursing Home.[176] At the Beaverlodge-Hythe General Hospital,[177] the "business administrator" and all those above that rank were excluded and at the Brentwood, Chinook and Southwood Nursing Homes the home "manager" was the only person excluded.[178] At the Alberta Hospital, supervisors and those above were excluded along with the confidential secretary to the administrator.[179] Managerial staff, office staff, and those employed in a confidential capacity with respect to labour relations were excluded at the Hardisty Nursing Home.[180] A similar unit was created for Central Park Lodges of Canada,[181] though no mention was made of office staff. At the Medicine Hat General Hospital a dispute arose over the confidentiality of the positions held by several secretaries and in the resultant reasons for decisions the Board clearly delineated its policy on such matters:

> In examining the applications before it the Board is of the

> opinion that in order for it to determine that a person is not an employee they must be, *in the regular course of their duties*, engaged in functions that would be classified as managerial functions, or functions that would be of a confidential nature *in matters relating to labour relations*. This does not mean duties incidental to their regular duties, nor does it have application when the extended functions are for periods of vacation relief, etc. The instant case of the payroll clerk is a prime example. While this person may, in the regular course of their duties be engaged in matters which are confidential, in the opinion of the Board they are not confidential in matters relating to labour relations. The same would hold true for the Secretary to the Laboratory, Supervisor and Pathologist and to the Planning Office Secretary.[182]

If the office staff in a hospital is large, the policy of including this staff, except for managerial and confidential exclusions, in an all-employee, service-type unit is likely to cause some problems. Since a larger and larger part of the office staff is becoming more and more highly trained, yet not necessarily more "managerial", it will become less and less acceptable to include these people in the general services unit. The following portion of a letter, written in response to a decision made regarding the *Misericordia Hospital* illustrates the feelings of those faced with inclusion in the general support unit:

> "In its deliberations the Board of Industrial Relations excluded managers from CUPE certification. I take exception to the Board's narrow definition of a manager, as one who has the authority to hire and fire others. How does the Board classify those staff members who define systems and procedures, manage financial recruitment and allocation, and plot strategy? I have yet to be given an answer. I am the Finance Co-ordinator of Budgets and Special Projects, a member of the Society of Industrial Accountants of Alberta and have always viewed myself as an active member of the hospital's management team. The Hospital has always shared the same view. Exactly *who* on the Board decided that I wasn't a manager?
>
> "There is dignity in all work, but what community of interest exists between myself and a union which represents housekeepers and laundry workers? By what right can a union alter my function as a manager? In my capacity as Co-ordinator of Budgets I have the unprecendented freedom to communicate, advise and instruct both laterally and vertically throughout the Hospital's organization without 'going through channels'. The consultative, confidential, and independent nature of my position will be seriously damaged

if it becomes a unionized one."[183]

The support service unit, as the standard units are now formulated in Alberta, is the only unit in which such personnel can be placed. The writer of the above letter did get himself excluded from the unit and, as more "professionals" enter the ranks of hospital office staffs, the pressure for exclusions will increase.[184]

In British Columbia, the office staff appear to have been generally recognized as a separate unit, being excluded from all-employee units[185] and/or placed in separate units,[186] although instances can be found where the staff is left in the all-employee unit.[187] Such a policy appears to recognize the two functions at work in the institution. The three-unit policy applies to those involved in the care of patients and their support staff while those involved in purely administrative functions are treated as a separate entity.

The position of hospital office staff in Ontario is far from clear with the Board approaching the whole matter of white-collar units on a "case by case basis".[188] Office staff units are created in both hospitals[189] and nursing homes[190] with office staff regularly excluded from all-employee units,[191] but the office staff is also periodically included in the all-employee unit in smaller institutions,[192] and even in larger ones on occasion, as Sack and Levinson indicate.[193]

It will be interesting to observe the reaction of office staff to their continued inclusion in support-type units in Alberta. The five-unit concept is a useful device for grouping medically related personnel and less highly-trained support personnel, but it may not provide a suitable "slot" for highly-trained office staff whose unique position appears to have been recognized only in British Columbia.

The Problem of Geographical Scope

A problem of rather recent origin in Alberta has been the question of whether health care certifications should be granted on a single location basis or with reference to some geographical area. The latter is tempting because of the hospital "district" in Alberta. Regardless of the number of institutions in the district, the directors of the hospital district are the ultimate authority and, as such, are the logical "employer". The district may have nursing home facilities, as well as auxiliary hospital and "active treatment" institutions with all three institutions sharing similar types of personnel. It is simply not logical to have different bargaining agents (a possibility with single location certification) representing the same type of employees with a common employer.

The question of geographical scope of the unit has arisen not only because of the logical attractiveness of the "district" as an administrative unit, but also because of the increasing tendency for health care institutions to sub-contract certain of the support service functions (cleaning and food services in particular) to outside enterprises specializing in such services. The sub-contractor becomes the employer and the question arises as to whether a single-employer unit without regard to geographical differences is appropriate or whether geographical factors are such that single location community of interest factors are strong, supporting the certification of units specific to particular institutions, despite the administrative inconvenience to the employer. The case record indicates that despite the obvious temptation, the Alberta Board has avoided a policy of granting only district-wide certifications and, instead, has examined the issue on a case by case basis.

The Board has granted district-wide certifications on several occasions. At the Stettler Municipal Hospital,[194] the nursing unit was altered to encompass the whole district. Dustbane Enterprises Ltd.[195] was denied a single location unit at the Rockyview General Hospital on the grounds that such a unit was only a fragment of "a number of locations within the city of Calgary where the employer had employees similarly employed," and in the case of the Grande Prairie General and Auxiliary Hospital and Nursing Home District #14,[196] the Board also granted a district-wide unit despite employer protests that such a unit allowed the union automatic certification in new institutions built in the area. V.S. Services Ltd.[197] was granted an area-wide unit of housekeeping personnel and failed in a bid to secure a single location certification for cleaning personnel at the Bethany Hospital in Calgary. In this case, the employer (Scot Young Ltd.)[198] argued that the single location unit was not feasible since the company employed over two hundred people at thirty-eight different sites within the city and all personnel functions, including hiring and firing, were handled from the central office. The applicant argued that there were differences in functions between office cleaning and hospital cleaning and, thus, the hospital workers belonged in separate units. The Board was apparently not impressed by the applicant's argument, for the single location unit was denied with the following statement accompanying the decision:

> In the opinion of the Board, where an employer conducts similar activities within a geographical area under common management within the City of Calgary, it would not be conducive to sound

> collective bargaining for a series of bargaining units to be established with respect to a group of employees performing similar tasks and having similar bargaining interests.[199]

The district-wide certification policy was continued in the Red Deer Auxiliary Hospital and Nursing Home District #14[200] where a general support services unit was granted on a district-wide basis over the protests of the employer that the applicant had used majority support in one location to "sweep in" employees at another location. A district-wide unit of auxiliary nursing care personnel was endorsed at the Edmonton and Rural Auxiliary Hospital and Nursing Home District #24 with the following comment by the Board regarding the particular situation:

> Considering the operations of this employer and having regard to the multiplicity of bargaining agents, the Board in this instance is of the opinion that any auxiliary nursing care unit other than on a district basis is not an appropriate unit for collective bargaining.[201]

The references made by the Board to the "operations of the employer" and the "multiplicity of bargaining agents" indicates an awareness of the importance of the features found in each particular case. This awareness is also evident in the case record. Instances may also be found where single location bargaining units were preferred.

At N.B. Cook Nursing Homes,[202] the Board rejected a unit encompassing three nursing homes in favour of a unit for each location, the grounds being that each home was run as a separate operation with little interference from the central authority. V.S. Services Limited[203] was granted a unit specific to the Alberta Hospital for food service employees. At the Calgary Auxiliary Hospital and Nursing Home District #7,[204] the Board granted three separate certifications, one for each of the health care institutions within the district. In the case of Deerhome School, the Board altered an area-wide certification to one that applied only to the school itself and, again, reference to the uniqueness of the situation was made:

> The Board recognized that this situation is unlike others wherein the Board has required that certifications in this type of industry be for an area unit as opposed to an individual outlet unit. In this case the Board noted that this request was unique as to the trade union affected and as such was prepared to grant this application on the basis of the uniqueness of the affected trade union.[205]

The Board was perhaps not being wholly fair to itself in stating that is has "required" that certifications be of an area type. A more accurate picture of the Board policy that appears to be more in line with the evidence is found in the Board statement ~~made~~ in the *Lethbridge General and Auxiliary Hospital and Nursing Home District #65* case:

> As the Board has considered applications for certification in the auxiliary health care field it has amended proposed bargaining units to a standard description. In seeking to standardize the units in this field the Board has attempted to recognize the representation desires of affected employees as well as the history of collective bargaining established in each of the outlets of a district on either an individual basis or a district basis.
>
> As the operations within each hospital district are unique, having regard to active treatment hospitals, auxiliary hospitals, and nursing home operations and having regard to the history of bargaining established the Board has not arbitrarily certified units on a district basis.[206]

The record indicates that the Alberta Board has indeed not been "arbitrary" in seeking to enforce district-wide health care certification practises, but has rather considered each case individually and made the decision according to what was found by way of evidence.

The policy of the Ontario Board is a marked departure from this approach, the rule being one of generally separate units for separate locations. This policy was summarized by Sack and Levinson:

> Where an employer does business at more than one place of business or plant within a municipality, the Board's policy (except in the case of retail or service stores) is to certify for each

> place of business or plant unless the operations are integrated and the employees share a community of interest . . . .
>
> It is not the Board's practise to include employees in widely separated municipalities in the same unit, unless there are compelling reasons to do otherwise, as where the operations are integrated, there is a regular interchange, the employees share a community of interest, or a group of employees would be deprived of bargaining rights.[207]

Health care units in Ontario are specific to the institution involved and the evidence indicates that where sub-contracted operations are involved, the standard unit is also specific to the institution,[208] the operations apparently not being integrated enough to warrant larger, area units encompassing one or more municipalities. The policy in British Columbia appears similar with health care units specific to the institution in question and sub-contracted service work units also confined to the single institution.[209]

The ideal situation, for a stability-conscious labour relations board point of view, would clearly be the use of standardized units covering fairly large standardized areas or districts. The Alberta Board is part way along this path already, but apparently it has realized, if the Lethbridge decision is considered indicative, that it would be unwise to try to force the square peg of the existing bargaining structure into the round hole of the Board's ideal structure. The Board may lean toward larger units where feasible, but "unique" situations found in some districts have made it impossible to rationally apply a larger unit policy in all cases.

CONCLUSION

The introduction to this chapter stressed that there was a deep-rooted tension in the health care industry caused by the conflict between the differentiated nature of the work force and the institutions involved, and the essentiality of the publicly-supported service that the industry provides. The former intimates a fragmented bargaining structure reflecting the differences while the latter dictates that the threat of service interruption must be reduced to an absolute minimum. In bargaining unit terms, one large unit might be ideal.

The rather unique response of the Alberta Board to this tension was the development of a "five unit" approach to health care bargaining structure. The five units are those that are acceptable to the Board, and all employees are now routed into one of these established units. The structure is a compromise between the opposing possibilities of one or two large units, or a multitude of smaller units. (In terms of the industrial-craft unit conflict, the new structure might be termed quasi-industrial.)

It is impossible, at this time, to pass judgement on the approach taken by the Alberta Board of Industrial Relations. The direct nursing care and general support service units did not produce any great structural upheavals when they were introduced and, thus, it might be reasonable to expect that the application of the standardized units in these sectors should be at least as successful as the previous structures (although the results of the continued inclusion of office staff in the support unit may warrant close observation).

The most challenging questions to arise in the health care sector were associated with decisions affecting those in the health care work force who occupied the "middle ground" between the nurses and the support service workers, those employed in paramedical and auxiliary nursing functions. This area provided a small scale version of the older problem of the individual rights-versus-stability, craft-versus-industrial unit controversy. The response of the Alberta Board was to create three units that would encompass all employees in this part of the work force, a unit for the auxiliary nursing personnel and one each for the professional and technical paramedical personnel. The Board believes that such units are necessary in order to produce "efficient and unambiguous collective bargaining unit administration."[210] Inefficiency and ambiguity are no doubt associated with instability, and instability is what the standardized units are clearly intended to avoid. The position taken by the Alberta Board is noteworthy, however, because it does not appear to be as "stability-dominated" as that of Ontario or British Columbia. These provinces do not, at least officially, recognize any differences between the various paramedical occupations and, instead, treat them as a single unit and do not recognize auxiliary nursing care as a separate function.

Only in the long run will one be able to assess the appropriateness of the standard unit policy. If stability does become the norm in the health care industry, with the parties concerned actually making use of the Board-sanctioned units, then the policy would have to be considered a success. If stability is not a result, or stability is produced only through the informal arrangements of the parties, then the wisdom of the policy is certainly questionable.

FOOTNOTES

The Health Care Industry

[1] The ABIR does not have jurisdiction over the total health care industry. Several large institutions are designated as Provincial General Hospitals under the Provincial General Hospitals Act (the boards of governors of these institutions report directly to a provincial cabinet minister) and the University of Alberta Hospital occupies a unique position under its own statute, the University of Alberta Hospital Act. The influences on bargaining structure in such institutions are no doubt numerous and worthy of examination, but they are beyond the scope of this study.

[2] C. Brian Williams, "Collective Bargaining in the Public Sector: A Re-examination," Industrial Relations, rpt. ser. no. 12, XXVIII, No. 1, 17-31.

[3] Ibid., p. 23. This condition is particularly accute in the case of hospitals as commented upon by Hepner et al:

"Most industries operate on a profit motive, whereas the hospital is usually based on the nonprofit motive. Hospital goals are measured in terms of quality of patient care as related to the social value of human life. This is opposed to industry's goals of profit in a competitive marketplace. There is little, if any, of the traditional competitive marketplace concept in the delivery of health care. Since good health is a right of all the people, it could be concluded that the greater the quantity of care available, the greater the utilization demand by the consumer. Also, when the direct cost to the potential patient is removed to a comparable extent by third-party payers, there is less tendency for the kind of built-in individual economic control by the consumer that is found in the traditional competitive marketplace" (James O. Hepner, John M. Boyer, and Carl L. Westerhaus, Personnel Administration and Labour Relations in Health Care Facilities Saint Louis: C.V. Mosby, 1969 , p. 21).

Greenfield also points out that the concept of a hospital as a private sector firm is erroneous:

"In proprietary institutions the administrator or owners would seek to keep the costs of production at a minimum and attempt to obtain maximum revenues so that the rate of profit per capital invested would be maximized. The management of nonprofit hospitals, governmental or other, however, is not similarly motivated since there are no 'owners' who seek to maximize the return on their investment" (Harry I. Greenfield, Hospital Efficiency and Public Policy New York: Praeger Publishers, 1973 , p. 9).

[4] Ibid., p. 25.

[5] The desires of the employees often appear to rank rather low in public sector unit decisions, probably because such desires raise the spectre of unit fragmentation.

[6] Norman Metzger and Dennis D. Pointer, Labour-Management Relations in the Health Services Industry (Washington, D.C.: Science and Health Publications, 1972), p. 15.

"Hospital business is big business. How many corporations do you know in B.C., or in Canada for that matter, that have over 100 plants, employee in excess of 20,000 people, and have an annual payroll in excess of $100 million? Should you think of a few, I am certain that none of them spend in excess of 75 percent of their total operating costs on wages and salaries" (Mary Falconer, "B.C. Hospitals Chart the Way in Province-Wide Bargaining," Hospital Administration in Canada, April 1970, p. 24).

[7] Metzger and Pointer, Labour-Management Relations.

[8] The United States Department of Labour found that even after extensive "composition" of job functions it was still able to clearly identify 238 distinct jobs in a survey of twenty-seven hospitals (Job Descriptions and Organizational Analysis for Hospitals and Related Health Services, U.S. Department of Labor, Manpower Administration, Training and Employment Service, 1970).

Metzger and Pointer in Labour-Management Relations list the following as potential bargaining units in the health care sector:

a. service employees;
b. supervisors or service employees;
c. maintenance employees;
d. supervisors of maintenance employees;
e. guards;
f. supervisors of guards;
g. office and clerical employees;
h. supervisors of office and clerical employees;
i. technical employees;
j. supervisors of technical employees;
k. pharmacists;
l. supervising pharmacists;
m. social workers;
n. supervisory social workers;
o. physical therapists;
p. registered nurses;
q. licensed practical nurses;
r. supervisory nurses;
s. dieticians;
t. interns and residents;
u. full-time and regular part-time physicians; and
v. watch and refrigeration engineers.

[9] Hepner et al go so far as to suggest that the hospital really operates under a guild system. The combination of legal restrictions, specialized training, and professionalism have so compartmentalized the work force that little or no change is possible (Labour Relations in Health Care, p. 118).

[10] Metzger and Pointer also point out that the industry is really quite widely dispersed with, overall, relatively few people employed in each location. The needs of the community will dictate to a large extent the type of service rendered and the service rendered will influence the needs and peculiarities of the institution (Labour-Management Relations).

[11] The problems associated with these conflicting tendencies did not go unheralded. In 1968 W.J. Gershenfeld made the following comment:

"Many tricky problems abound in future collective bargaining relationships in the hospital, particularly with regard to the problem of resolving the interests of the various professional and non-professional groups there" ("Organization and Bargaining in Hospitals," Monthly Labour Review, July 1968 , 51).

The differing functions between institutions are recognized in the founding legislation. The Alberta Hospitals Act, Part (3) Section 47(j) provides that standard hospitalization is to include the following services:

a. food and accommodation;
b. nursing;
c. diagnostic facilities;
d. drugs and their administration;
e. operating room and surgical services;
f. radiotherapy; and
g. physiotherapy.

The Nursing Homes Act provides that such institutions will provide only the following services:

a. accommodation, meals and laundry services;
b. personal services--help in cleanliness, mobility, feeding, and dressing;
c. routine drugs and dressings; and
d. recreational and diversional activities.

[12] Metzger and Pointer, Labour Management Relations, p. 15.

[13] The medical staff of the institution is recognized by its own statute, the Medical Profession Act, and also in the Alberta Hospitals Act which requires that the medical staff of a hospital provide the board of governors of the hospital with a set of bylaws governing the conduct of the doctors employed by the hospital.

[14] Mineral Springs Hospital, Banff v HSA [1976], ABIR, LR-28-M-5.

[15] Holy Cross Hospital, Calgary v HSA [1976], ABIR, LR-28-H-1.

[16] St. Michael's Hospital, Lethbridge v HSA, letter from Mr. W. Canning, Board Registrar, to Sister M. Clarissa, St. Michael's Hospital [1976], ABIR, LR-28-S-1. Professional Direct Patient Care was to include registered nurses and their instructors. Auxiliary Nursing Care was to include those assisting registered nurses or performing other functions that involved contact with the patient. Orderlies and Certified Nursing Aides were to fall into this group. General Support Services would be the catch-all or tag-end unit containing clerical, housekeeping, and food service personnel. The Paramedical Technical

and Paramedical Professional units were to reflect the differing skill levels in the para-professional group with the latter including people like pharmacists and physiotherapists and the former including lab technicians and other related personnel.

[17] Wainwright General Hospital v Building Service Employees Union [1967], ABIR, LR-950-W-4.

[18] Misericordia Hospital v Building Service Employees Union #323A [1968], ABIR, LR-950-M-1.

[19] Holy Cross Hospital v CUPE #936 [1968], ABIR, LR-1413-M-1. Similar personnel were also denied their own separate unit in Drumheller (Drumheller Auxiliary Hospital and Nursing Home District #3 v CUPE #715 [1968], ABIR, LR-2135-D-2).

[20] Ibid., letter from Mr. W. Lake to Mr. H.C. French.

[21] Misericordia Hospital v CUPE #1314, ABIR, LR-2485-M-1.

[22] Misericordia Hospital v Building Service Employees Union #323A [1968], ABIR, LR-950-M-1.

[23] Mount St. Mary's Hospital v Hospital Employees Union #180 [1966], BCDOLSOA. Similar units were also certified in the following cases: Chermanius General Hospital v Hospital Employees Union #180 [1966], BCDOLSOA; Langley Memorial Hospital v Hospital Employees Union #180 [1966], BCDOLSOA; Cumberland General Hospital v Hospital Employees Union #180 [1968], BCDOLSOA; Cranbrook and District Hospital v Hospital Employees Union #180 [1968], BCDOLSOA; St. Bartholomew's Hospital (Lytton) v Hospital Employees Union #180 [1969], BCDOLSOA.

[24] Jeffrey Sack and Martin Levinson, Ontario Labour Relations Board Practise (Toronto: Butterworth's, 1937), p. 75.
This statement was verified by a recent comment by the OLRB:
"It has been the policy of this Board, since the initial applications for hospitals by such unions as the Service Employees International Union, to find an 'all employee unit' which includes registered nursing assistants in the appropriate bargaining unit" (Wellesley Hospital v Nurses Association of Wellesley Hospital, and a group of employees (objectors), [1974], OLRBR 71).

[25] Royal Alexandra Hospital v CNA's [1972], ABIR LR-552-R-1.

[26] Ibid., letter from Mr. G. Gough, Secretary to the Board, to Mr. A.B.C. Chivers, 26 April 1973, ABIR.

[27] Metro-Calgary and Rural General Hospital District #93 v CNA's [1973], ABIR, LR-552-C-7.

[28] Edmonton General Hospital v CNA's [1973], ABIR, LR-552-E-1.

[29] Misericordia Hospital v CNA's [1973], ABIR LR-552-M-2.

[30] Wellesley Hospital v Nurses Association of Wellesley Hospital, and a group of employees (objectors) [1974], OLRBR.

[31] Hinton General Hospital v CNA's [1975], ABIR, LR-552-H-1.

[32] Misericordia Hospital v CUPE #1975 et al [1975], ABIR, LR-552-M-1.

[33] Mayerthorpe General Hospital District #38 v CNA's [1975], ABIR, LR-552-M-3.

[34] Islay Municipal Hospital v CNA's [1975], ABIR, LR-552-I-1.

[35] Magrath Municipal Hospital v CNA's [1975], ABIR, LR-552-M-4.

[36] Pincher Creek General Hospital v CNA's [1975], ABIR, LR-552-P-1.

[37] Ibid., letter from Mr. W. Canning, Board Registrar, to Mr. G.M. Borrow, Pincher Creek Hospital, 28 July 1975.

[38] Ibid., Reasons for Decision (respecting 12 December 1975 application), 18 February 1976.

[39] Letter from Mr. W.R. Connolly, Edmonton General Hospital, to Mr. M. Marlowe, Board Registrar, 12 March 1976.

[40] Royal Alexandra Hospital v CNA's, 1972.

[41] Edmonton General Hospital v CNA's, 1973.

[42] Hinton General Hospital v CNA's, 1975.

[43] Misericordia Hospital v CNA's, 1973.

[44] Whitecourt General Hospital District #97 v CNA's [1976], ABIR, LR-552-W-4.

[45] High River General Hospital District #11 v CNA's [1976], ABIR, LR-552-H-1.

[46] Ibid., letter from Mr. B.W. Johnson, High River General Hospital, to Mr. W. Canning, Board Registrar, 3 May 1976, ABIR.

[47] Calgary Hospital District #93 v CNA's [1976], ABIR, LR-552-M-1.

[48] Edmonton General Hospital v CNA's [1973], ABIR, LR-552-E-1.

[49] Edmonton Rural Auxiliary Hospital and Nursing Home District #24 v CUPE [1976], ABIR, LR 738 and 2392.

[50] The broader unit definition would logically bring those organizing in the field into more frequent conflict. As long as the

CNA's could obtain units of their own members they did not have to deal that often with CUPE, but once both organizations had to organize a broader unit, or leave the field entirely, the potential for conflict was greatly increased.

[51] Wainwright General and Auxiliary Hospital and Nursing Home District #17 v Health Sciences Association [1976], ABIR, LR-28-W-2. In this case the Board also left psychiatric attendants in the Health Sciences Association Unit (contrary to its actions at the Edmonton General) citing their bargaining history as the reason for doing so.

[52] Hepner and his colleagues could find no suitable "slot" in which to place the non-professional nursing group:

"The only way out is to join forces with the other undefined service groups of employees in the institution, such as those in housekeeping, dietary, or laundry. Although nurses' aids, orderlies and attendants may be basically group minded for their own benefit, they pragmatically do not have a group to turn to with ready-made mutual interests" (Labour Relations in Health Care, p. 339).

[53] Kelowna Hospital Society v Hospital Employees Union #180, and Health Sciences Association of British Columbia [1977], part of submission to the Board from the Health Labour Relations Association.

[54] For a complete discussion of the "professional problem" see Chapter 2 of this study.

[55] In some cases these paramedical groups had even received voluntary recognition from the employer and, thus, had even obtained employer recognition of their uniqueness. The problem was complicated, then, by the Board's having to consider the implications of tampering with an existing bargaining structure.

[56] Misericordia Hospital v Building Service Employees Union #323A [1968], ABIR, LR-950-M-1.

[57] Royal Alexandra Hospital v CUPE #41 [1968], ABIR, LR-339-R-1.

[58] Claresholm Municipal Hospital v CUPE #1234 [1969], ABIR, LR-20-86-C-1.

[59] At the Boundary Hospital, X-ray technicians and lab technologists were excluded from a unit of all lay employees (Boundary Hospital v Hospital Employees Union #180 [1966], BCDOLSOA, as were dieticians, dietary assistants, physiotherapists, occupational therapists, lab technologists and X-ray technologists at the Royal Jubilee Hospital (Royal Jubilee Hospital v Hospital Employees Union #180 [1970], BCDOLSOA). Similar exclusions were also made at the University Health Services Hospital (University of British Columbia v CUPE #116 [1971], BCDOLSOA).

[60] A unit of just lab and X-ray technologists was rejected as inappropriate at the Squamish General Hospital (Squamish General

Hospital v Hospital Employees Union #180 [1968], BCDOLSOA) and at St. Joseph's Hospital, a unit of physiotherapists and dieticians only was turned down (St. Joseph's Hospital v Health Sciences Association of B.C. [1976], BCDOLSOA) as was an attempt to create a unit made up of exclusively medical technologists (British Columbia Society of Medical Technologists v 62 B.C. Hospitals [1971], BCDOLSOA).

[61] Kelowna General Hospital v Health Sciences Association of B.C. [1971], BCDOLSOA. Similar units were also certified at Burnaby General Hospital, Prince George Regional Hospital, Trail Regional Hospital, St. Paul's Hospital and Lion's Gate Hospital. The paramedical group was still a long way from becoming a clearly-defined group, however, as this comment in a contemporary periodical points out:

"BCHA says that standardization of job categories makes for more realistic bargaining. It also gives hospital administrators a clearer picture of operating costs. . . . Still not standardized are many paramedical, technical, clerical and dietary cooking groups" (Falconer, "B.C. Hospitals Chart the Way," p. 24).

[62] Sack and Levinson, Ontario Board Practise.

[63] Salvation Army Grace Hospital v CUPE #1328 [1972], ABIR, LR-225.

[64] Calgary General Hospital v Calgary General Hospital Association of Registered Lab Technologists [1972], ABIR, LR-909, letter from R.B. d'Esterre to the Association.

The Board's attitude toward more inclusive units is also shown in the Calgary General Hospital v Calgary General Hospital Health and Research Employees Association case. Here the Board rejected a unit of paramedical personnel on the grounds that ". . . the instant application omits classifications of employees which must be included to establish a unit appropriate for collective bargaining" (Calgary General Hospital v Calgary General Hospital Health and Research Employees Association [1972], ABIR, LR-160). The physiotherapists who involved themselves in the application apparently did so against the wishes of their own association. An officer of the association made the following comment regarding the wisdom of including physiotherapists in such a unit:

"It is difficult enough, with existing legislation, for my Association to bargain for salaries and conditions of service without having small groups in isolated hospitals trying to fragment my members . . . it is not in the best interests of either the public or my profession to have small splinter groups like that proposed by the "paramedical group" at Calgary General Hospital" (letter from John Semple to Mr. G. Gough, 8 May 1972).

[65] Misericordia Hospital v Health Sciences Association [1972], ABIR, LR-28-M-1.

[66] For example, the physiotherapists argued that they were bona fide professionals, unlike some others in the group, because they made professional decisions for which they were legally responsible, they

could set up a private practise, they could accept or refuse patients, they could alter treatments, they were university graduates with national standards, and they had a nationally accepted and codified set of rules governing their professional conduct.

[67] Misericordia Hospital v Health Sciences Association [1972], ABIR, LR-28-M-1, letter from Mr. G. Gough to Mr. Jean L. Pettifor.

[68] Rockyview General Hospital v Health Sciences Association [1972], ABIR, LR-28-R-1.

[69] St. Michael's Hospital (Lethbridge) v Health Sciences Association [1972], ABIR, LR-28-S-1.

[70] Such a division may have been contemplated earlier. In the 1971 case of Misericordia Hospital v Alberta Division, Employee Pharmacists Association, the Board granted the pharmacists a separate unit of their own only shortly before making statements indicating that larger, more comprehensive units would be favoured.

[71] Holy Cross Hospital v Health Sciences Association [1973], ABIR, LR-28-H-1.

[72] Claresholm General Hospital v Health Sciences Association [1973], ABIR, LR-28-C-2.

[73] Red Deer General Hospital v Health Sciences Association [1973], ABIR, LR-28-R-3.

[74] Edmonton General Hospital v Health Sciences Association [1973], ABIR, LR-28-E-1.

[75] Salvation Army Grace Hospital v Health Sciences Association and CUPE (intervenor) [1973], ABIR, LR-28-510. A unit that, at first glance, seemed to depart from the "technical personnel" type unit was created at the Red Cross Blood Transfusion Service where a unit made up of only Medical Laboratory Technologists was certified, but such personnel were likely the only technicians employed by the service; the unit was really still an all-inclusive technical unit (Red Cross Blood Transfusion Service v Health Sciences Association [1974], ABIR, LR-28-C-5).

At the Morinville Municipal Hospital, however, the Board recognized a "combined lab technician" as a paramedical function which created a two-person unit and allowed certification (Morinville Municipal Hospital v Health Sciences Association [1975], ABIR, LR-28-M-4).

[76] In the Beaverlodge-Hythe General Hospital case, the Board altered the applicant's application in order to avoid any possible overlap with the technical unit of the Health Sciences Association (Beaverlodge-Hythe General Hospital v CUPE #1808 [1975], ABIR, LR-944-B-1). In the case of the Immaculata Hospital, the Board altered the existing unit of the Service Employees International Union in order to avoid conflicts with the Health Sciences Association (Immaculata Hospital

(Westlock) v Health Sciences Association [1975], ABIR, LR-28-I-1).

[77] Existing units of technicians were altered to the new unit description at a number of locations including Rockyview General Hospital, St. Michael's Hospital, Holy Cross Hospital, Edmonton General Hospital, Red Deer General, and Magrath Municipal Hospitals.

[78] Medicine Hat Hospital District #69 v Ambulance Personnel Association [1976], ABIR, LR-2151-M-1. In this instance, the Ambulance Service was closely integrated into the hospital structure. In cases where the service is run as a totally separate entity the employees are more likely to be grouped in an all-employee unit specific to the company (e.g., Port Colborne Ambulance Service Centre v CUPE [1973], OLRBMR).

[79] Examples of such exclusions may be found in the cases of Fort Nelson General Hospital v Hospital Employees Union #180 [1976], BCDOLSOA; Children's Hospital v Hospital Employees Union #180 [1976], BCDOLSOA; Queen Victoria General Hospital v Hospital Employees Union #180 [1976], BCDOLSOA.

[80] A notable exception occurred in the Workmen's Compensation Board case where the Board did not separate the paramedical group, but rather included them in the all-employee unit with the following comment:

"The paramedical group, undoubtedly, are a group with special skills, and apparently a group with a special philosophy. However, they are not seen by the Board as a group apart from the whole. They, together with other functional groups, are an integral part of a coherent unit whose occupational identity ought to be preserved" (Workmen's Compensation Board v Workmen's Compensation Board Employees Association and Health Sciences Association of B.C. [1974], CLRBR 413).

The Board pointed out that this case was unique in that the employees of the Workmen's Compensation Board had worked very hard at maintaining a separate identity including little association with outside unions. The Board did not want to "dilute this achievement" by creating two bargaining units:

"The Board is persuaded that fragmentation of large bargaining units is to be avoided in the main, and that compelling reasons must exist before separate bargaining units are created in a case such as this" (ibid.).

[81] Such clarification notes may be found in Toronto General Hospital v CUPE, Operating Engineers #101 (intervenor #1), CSAU National, Inc. (intervenor #2), Canadian Union of Operating Engineers (intervenor #3), [1972], OLRBMR, or Pembroke General Hospital v CUPE [1972], OLRBMR.

[82] St. Joseph's Hospital v CSAO National Inc. [1972], OLRBMR; Oakville Trafalgar Memorial Hospital Association v CSAO National Inc. [1972], OLRBMR; Mississauga Hospital v CSAO National Inc. [1973], OLRBMR; and Royal Victoria Hospital v CSAO National Inc. [1973], OLRBMR.

[83] Ottawa General Hospital v CSAO National Inc. [1972], OLRBMR,

and Renfrew Victoria Hospital v CUPE [1973], OLRBMR.

[84] New Mount Sinai Hospital v Operating Engineers #796 [1973], OLRBMR; Hotel Dieu Hospital v CSAO National Inc. [1973], OLRBMR; and Toronto General Hospital v CSAO National Inc. [1973], OLRBMR.

[85] Windsor Western Hospital Centre Inc. v Service Employees Union #210 [1973], OLRBMR; and Pembroke General Hospital v CUPE [1972], OLRBMR.

[86] Guelph General Hospital v Civil Service Association of Ontario [1973], OLRBMR; and Metropolitan General Hospital v Service Employees Union #210 [1973], OLRBMR.

[87] Sunnybrook Hospital v Civil Service Association of Ontario [1974], OLRBR.

[88] Ibid., p. 143. Quoted from the case of Northwestern Hospital.

[89] St. Vincent Hospital v Health Sciences Association of the Regional Municipality of Ottawa-Carleton [1975], OLRBR.

[90] Ibid., p. 15.

[91] The Greater Niagara Hospital v Health Sciences Association of the Regional Municipality of Niagara Falls [1975], OLRBR, 17. The Board echoed similar sentiments in the Niagara Regional Health Unit case where the same applicant sought another narrow unit:
". . . the resultant fragmentation of bargaining units compelling the employer to engage in multiple bargaining would be simply incompatable with sound industrial relations in the bureaucratic white collar setting" (Niagara Regional Health Unit v Health Sciences Association of the Regional Municipality of Niagara Falls, and CUPE (intervenor) [1975], OLRBR 383).

[92] Surrey Memorial Hospital v Hospital Employees Union #180, and Health Sciences Association of B.C. [1975], CLRBR. In this case, the Board also referred to the report of the Ontario Government Commission on the Healing Arts, which found that the paramedical group was really three distinct groups: technicians, who run the labs and other diagnostic facilities; therapists, who perform services on what may be termed the margin of what doctors provide; and medical clerical personnel, who handle distinctly "medical" records. Obviously neither the Ontario or British Columbia Boards felt that the distinctions between thesegroups were sufficient to warrant separation for collective bargaining purposes.

[93] Stratford General Hospital v Ontario Public Service Employees Union, and Association of Allied Health Professionals [1976], CLRBR. (This report supplemented by case report received from the Solicitor of the Ontario Board.)

[94] The Public Service Employees Union wanted a unit that included:

occupational therapists, registered technologists (pathology), radiological technologists (radiography), radiological technologists (nuclear medicine), respiratory technologists, registered social workers, psychometrists, phychologists, charge technologists, clerical instruction (radiology) and dieticians. The Health Sciences Association wanted what appeared to be a more "professional" unit consisting of physiotherapists, occupational therapists, social workers, psychologists, psychometrists, pharmacists, medical records librarians, and therapeutic and administrative non-supervisory dieticians.

[95] ". . . this Board is not prepared to put a premium on consultation with particular doctors" (Stratford General Hospital v Ontario Public Service Employees Union, 78).

[96] Kelowna Hospital Society (Kelowna General Hospital) v Hospital Employees Union #180, and Health Sciences Association of British Columbia [1977], as yet unreported, copy of this decision provided to the writer by W.C. Rilkott, Legal Assistant to the Chairman of the Board, BCLRB.

The question addressed in this case is whether the EEC Technician is to be included in the paramedical unit or the general support unit. (The nine established para-professions are physiotherapists, medical records librarians, dieticians, medical social workers, hospital pharmacists, occupational therapists, remedial gymnasts, radiological technicians, and medical technologists.)

[97] Kelowna Hospital Society v Hospital Employees Union #180, and Health Sciences Association of British Columbia [1977], part of submission to the Board from the Health Labour Relations Association.

[98] Misericordia Hospital v Building Service Employees Union [1968], ABIR, LR-950-M-1. This unit was later altered to show those included rather than those excluded. The unit might also have taken the form of a department-specific unit if it was clear that all support personnel were placed in such units (e.g., The Laundry and Maintenance Employees unit at Calgary Auxiliary Hospital, District #7 v CUPE #8 [1970], ABIR, LR-945-C-4).

[99] Sack and Levinson, Ontario Board Practise, p. 75.

[100] The British Columbia unit description usually read "all employees employed at ____________ except graduate and registered nurses" (e.g., Chemanius General Hospital v Hospital Employees Union #180 [1966], BCDOLSOA or, Mennonite Benevolent Society v Hospital Employees Union #180 [1968], BCDOLSOA). The policy of using shortened unit descriptions is an old one in British Columbia:

"The second policy or practise, peculiar to a few jurisdictions including British Columbia, is that of describing bargaining units in a shorthand generic fashion .. . . The principle purpose of the certificate is to assist in getting bargaining under way. The details of the scope of bargaining authority may be settled by the course of bargaining over time" (Kelowna Hospital Society v Hospital Employees Union #180, and Health Sciences Association of British Columbia [1977], as yet unreported).

[101] Salvation Army Grace Hospital v CUPE #1382 [1971], ABIR, LR-225.

[102] Rockyview General Hospital v Operating Engineers #955, and Rockyview Hospital Employees Association [1971], ABIR, LR-955-M-28 and LR-1683.

[103] Richmond General Hospital v Operating Engineers #882 [1966], BCDOLSOA, and St. Mary's Hospital v Operating Engineers #882 [1973], BCDOLSOA.

[104] Royal Jubilee Hospital v Plumbers and Pipefitters #324 [1969], BCDOLSOA. A unit of "plumbers and their helpers and apprentices" was certified.

[105] St. Joseph's General Hospital v Operating Engineers #918 [1966], BCDOLSOA; Surrey Memorial Hospital v Operating Engineers #918 [1972], BCDOLSOA; and Gorge Road Hospital v Operating Engineers #918 [1973], BCDOLSOA.

[106] The Doctors Hospital v Operating Engineers #796, and CUPE [1972], OLRBMR; McMaster University Medical Centre v Service Employees International Union #532, and Canadian Union of Operating Engineers [1972], OLRBMR and Port Hope and District Hospital v CUPE [1973], OLRBMR.

[107] Etobicoke General Hospital v Canadian Union of Operating Engineers [1972], OLRBMR, and Douglas Memorial Hospital v Operating Engineers # 772 [1973], OLRBMR.

[108] Misericordia Hospital v Building Service Employees Union [1968], ABIR, LR-950-M-1.

[109] Beaverlodge-Hythe General Hospital v CUPE #1808 [1975], ABIR, LR-944-B-1.

[110] Royal Alexandra Hospital v CNA's [1976], ABIR, LR-552-R-1.

[111] The all-employee unit descriptions only became more complex as it became necessary to indicate the growing number of exclusions as the paramedical groups appeared on the scene.

[112] Riverdale Hospital v Health Sciences Association of Metropolitan Toronto, and CUPE #79 (intervenor) [1974], CLRBR.
In the St. Vincent Hospital case, the OLRB stated one of its major concerns regarding the proposed paramedical unit to be the proposed or likely relationship between the "usual hospital service employees unit" and the Health Sciences unit (St. Vincent Hospital v Health Sciences Association of the Regional Municipality of Ottawa-Carleton [1974], CLRBR).

[113] Surrey Memorial Hospital v Health Sciences Association of British Columbia, and Hospital Employees Union #180 [1975], CLRBR.
The Ontario Board had to make a similar determination in the

Collingwood General Marine Hospital case (Collingwood General Marine Hospital v Civil Service Association of Ontario, and Service Employees Union #204 [1975], OLRBR).

[114] The Royal Inland Hospital v Hospital Employees Union #180 [1977], as yet unreported, copy of the decision provided to the writer by W.G. Rilkott, Legal Assistant to the Chairman of the Board, BCLRB.

[115] There were some difficulties in relation to the managerial status of nurses and this subject is handled separately later in this chapter.

[116] Blunt's Nursing Homes (1965) Ltd. v CUPE #1056 [1969], ABIR, LR-397-B-1.

[117] Baptist Haven of Rest v CUPE #1056 [1969], ABIR. It is noteworthy that in this and in the Hardisty case there were no nurses employed at the time of application which is likely the reason that nurses were not specifically excluded in the unit description. (At Blunt's, nurses were excluded in 1973.)

[118] Hardisty Nursing Home Ltd. v Building Service Employees Union #323A [1975], ABIR, LR-950-H-1; Westhaven Nursing Home v Building Service Employees Union #323A [1968], ABIR, LR-950-C-1; N.B. Cook Corp. Ltd. CUPE #8 [1976], ABIR, LR-945-C-1, LR945-B-1, LR-945-S-1, and Central Park Lodges of Canada Ltd. v CUPE #41 [1976], ABIR, LR-339-C-1.

[119] City of Calgary v CUPE [1966], ABIR, LR-1965-C-1; Leduc-Strathcona Health Unit v AARN [1967], ABIR, LR-940-L-2; Vegreville Health Unit #15 v AARN [1970], ABIR, LR-940-V-1, and Athabasca Health Unit #18 v CUPE #1906 [1975], ABIR, LR-95-A-1.

[120] Victorian Order of Nurses v AARN [1974], ABIR, LR-940-V-2 and LR-940-V-3.

[121] Sack and Levinson, Ontario Board Practise, p. 76. There is no evidence to indicate that this policy has changed since the analysis by these two authors (e.g., Extendicare Canada Ltd. v Nurses Association, Extendicare Nursing Home [1973], OLRBMR, or John Noble Home v Nurses Association, John Noble Home [1973], OLRBMR).

[122] Victorian Order of Nurses, Ottawa Carleton Branch v Nurses Association, Victorian Order of Nurses, Ottawa Carleton Branch [1972], OLRBMR.

[123] In the data gathered pertaining to unit activity in British Columbia no cases involving health units or private nursing care operations could be found. At the Jewish Home for the Aged, graduate nurses were specifically excluded from the unit (Jewish Home for the Aged of British Columbia v Hospital Employee Union #180 [1970], BCDOLSOA).

[124] Westhaven Nursing Home v Building Service Employees Union #323A [1968], ABIR, LR-950-C-1.

[125] Blunt's Nursing Homes v CUPE #408 [1973], ABIR, LR-397-B-1.

[126] Lac La Biche General Hospital v AARN [1974], ABIR, LR-940-L-8.

[127] N.B. Cook Nursing Homes Ltd. v CUPE #8 [1975], ABIR, LR-945-N-1.

[128] Two Hills General Hospital v AARN [1975], ABIR, LR-940-T-2.

[129] This problem apparently arose in the case of Hardisty Nursing Home v AARN [1975], ABIR, LR-940-H-3. As a result, Mr. Brunsdon, Secretary to the Board wrote to Yvonne Chapman of the Association informing her that the Nurses Association could apply to have their unit descriptions altered and that the matter would be dealt with "administratively" (22 July 1975).

[130] This arrangement was confirmed by Mr. M. Marlowe, Secretary to the ABIR, who also informed me that the nurses have now formed another organization, this time with a constitution that allows for the admission of unregistered personnel.

[131] Mills Memorial Hospital v Registered Nurses Association of British Columbia [1966], BCDOLSOA; Mile District General Hospital v Registered Nurses Association of British Columbia [1967], BCDOLSOA; Mount St. Mary's Extended Care Hospital v Registered Nurses Association of British Columbia [1969], BCDOLSOA; Langley Memorial Hospital v Hospital Employees Union #180 [1969], BCDOLSOA; Mount St. Mary's Hospital v Hospital Employees Union #180 [1966], BCDOLSOA; and Columbia Care Centres Ltd. v Hospital Employees Union #180 [1969], BCDOLSOA.

[132] The Corporation of the City of Hamilton v Nurses Association of Macassa Lodge [1972], OLRBMR; Sensenbrenner Hospital v Nurses Association, Sensenbrenner Hospital [1972], OLRBMR; and Welland County General Hospital v Nurses Association, Welland County General Hospital [1973], OLRBMR.

In Ontario it is occasionally stipulated that an inclusion or exclusion refer only to "lay" graduate and registered nurses, the members of various nursing religious orders not wishing to engage in collective bargaining (e.g., the Religious Hospitallers of Hotel Dieu of St. Joseph of the Diocese of London v Nurses Association Hotel Dieu of St. Joseph [1972], OLRBMR; or Ottawa General Hospital v Nurses Association Ottawa General Hospital, and CSAO National Inc. [1973], OLRBMR).

The use of "graduate" and "registered" does not always, it seems, make the issue perfectly clear. In a recent decision, the Ontario Board ruled that non-registered nurses were to be included in the general support unit based on the technicality that they were included in the salary schedule of the CUPE collective agreement which the Board interpreted as a clear indication of the original intent of the parties (Memorial Hospital, Bowmanville v Ontario Nurses Association, and CUPE #137 [1975], OLRBR).

[133] Misericordia Hospital v Health Sciences Association [1972],

ABIR, LR-28-M-1.

[134] Wainwright General Hospital v Health Sciences Association [1973], ABIR, LR-28-W-2.

[135] A unit made up of only Psychiatric Nurses was rejected at the Lion's Gate Hospital in Vancouver, the use of the word "graduate" suggesting that these people are included with other nurses (Lion's Gate Hospital v Psychiatric Nurses Association of British Columbia [1971], BCDOLSOA).

A similar situation appears to exist in Ontario where "graduate nursing staff" are excluded from all-employee units and the generality of the nursing unit itself would seem to encompass such job functions.

[136] Metro Calgary Hospital District #93 v Holy Cross School of Nursing Faculty Association [1975], ABIR, LR-655-M-1.

[137] Cranbrook and District Hospital and Selkirk College v Hospital Employees Union #180 [1974], CLRBR.

[138] Ibid., p. 51.

[139] The following conditions persuaded the Board to conclude that the student nurses were not "employees":

a. The students were selected, evaluated, promoted and eventually graduated by decision of the college only.

b. Student attendance, supervision, and discipline were all handled by the college.

c. Work was assigned in relation to educational needs, not in response to any hospital requirements.

d. The hospital paid nothing to the students.

e. The students returned to the college to write exams after their practical training. They had no obligation whatever to the hospital and could seek employment wherever they wished.

f. The hospital was required to maintain a full staff load, even while students were in the hospital; the students were not used as a cheap source of labour.

[140] St. Paul's Hospital v Professional Association of Residents and Interns (PARI) [1976], CLRBR.

[141] This comparison did not appear to prove that fruitful because of the variety and peculiarity of the relationships of other physicians with the hospital.

[142] St. Paul's Hospital v PARI, 7 July 1976, p. 171.

[143] In March of 1975, PARI had gone on strike because the hospitals would not accept binding arbitration of interest disputes. The application for official certification was a method of avoiding such problems in future. Since professionals were no longer excluded from the Code, the group was eligible for certification, and if this were granted, arbitration was available under section 73 of the Code.

[144] In the *Hotel Dieu of St. Joseph's Auxiliary Hospital* case, the type of institution was recognized over the standard unit concept. An "all employees except" type of unit was certified despite protests that this flew in the face of the newly established policy. The Board answered the protest by pointing out that it was proper to have a smaller number of units in smaller institutions (Hotel Dieu of St. Joseph's Auxiliary Hospital v CUPE [1973], ABIR, LR-62.)

[145] Victoria General Hospital v Health Sciences Association of British Columbia [1975], CLRBR.

[146] Ibid., p. 42.

[147] Ibid., p. 43.

[148] The Royal Inland Hospital v Hotel Employees Union #180 [1977], as yet unreported, copy of the decision provided to the writer by Mr. W.G. Rilkoff, Legal Assistant to the Chairman, BCLRB.

[149] Ibid.

[150] Wainwright General Hospital v Building Service Employees Union [1967], ABIR, LR-950-W-4.

[151] Elizabeth House Guild v CUPE #41 [1968], ABIR, LR-339-E-1. "Supervisor" and "Department Head" appear to mean different things to different people and the two are used interchangeably in unit descriptions. It will be assumed here that they are roughly comparable to each other.

[152] Claresholm Municipal Hospital v CUPE #1234 [1969], ABIR, LR-20-86-C-1.

[153] Breton General Hospital v CUPE #1413 [1971], ABIR, LR-942-B-1.

[154] Red Deer General Hospital v Health Sciences Association [1973], ABIR, LR-28-R-3.

[155] Chinook Nursing Home Ltd. (N.B. Cook Corp. Ltd.) v CUPE #8 [1976], ABIR, LR-945-C-1.

[156] Sack and Levinson, *Ontario Board Practise*, p. 32.

[157] The recent nurses strike in Alberta (July 1977) is indicative of the essential role still played by direct nursing. There appeared to be no question of whether the affected institutions could "struggle along" while the strike was on; when the nurses left the health care services were terminated.

[158] The nurses' position in the hospital, as initially pointed out by them, was such that normal managerial criteria could not be applied:

> "An analysis of the meaning of supervision in nursing literature

reveals an attempt to lean towards the definitions of "supervisor" as they appear in industry, business, or education, in which fields supervisor has been developed to a greater efficiency than it has up to the present in nursing. There is nothing wrong in looking to these fields for help and guidance, but what is and has been fallacious is to accept the usages of supervision from these fields without making proper adaptations to nursing" (Daniel H. Kruger, "The Appropriate Bargaining Unit for Professional Nurses," Labour Law Journal, (January, 1968), 8.

[159] Barbara G. Schutt, "Conflicts and Loyalties," American Journal of Nursing, (March, 1969) 507.

[160] Of the seven cases cited by Sack and Levinson (Ontario Board Practise, p. 33) in relation to the question of hospital managerial personnel, six involve determinations of the status of nursing personnel. The cases mentioned in this study are representative of this group and portray the more recent position of the Ontario Board in these particular matters.

Here, again, the problem of interchangeable job titles is present. Terms like head nurse, nursing supervisor, director of nursing, matron and charge nurse are used with abandon and no explanation is provided regarding their meaning in relation to other institutions. We must assume that all these titles refer to individuals who are clearly holding positions of some responsibility, though the exact responsibilities may vary from location to location.

[161] Toronto East General Orthopaedic Hospital Inc. v Ontario Nurses Association and Service Employees Union #204 [1974], CLRBR.

[162] Ibid., cited by Ontario Board in case of St. Peter's Hospital v Ontario Nurses Association [1975], CLRBR, 23.

[163] St. Peter's Hospital v Ontario Nurses Association [1975], CLRBR.

[164] Ibid., p. 24. The head nurse was also ruled non-managerial in the case of Westmount Hospital v Ontario Nurses Association [1976], OLRBR.

[165] It does not appear to have been a factor at all in British Columbia. Unit inclusions and exclusions merely refer, as has been pointed out, to "graduate" or "registered" nurses with no attached proviso regarding senior personnel, their status apparently left up to the desires of the parties.

[166] Lacombe General Hospital v AARN [1976], ABIR, LR-940-L-4; Lac La Biche General Hospital v AARN [1974], ABIR, LR-940-L-8; and Lamont-Smokey Lake Auxiliary Hospital v AARN [1975], ABIR, LR-940-L-6.

[167] Calgary Local Board of Health v AARN [1969], ABIR, LR-940-C-1.

[168] Vegreville Health Unit #15 v AARN [1970], ABIR, LR-940-V-1.

[169] St. Vincent's Hospital v Hospital Employees Union #180 [1974], CLRBR, 365.

[170] Good Samaritan Auxiliary Hospital v CUPE [1967], ABIR, LR1266-G-1.

[171] Wainwright General Hospital v Building Service Employees Union [1967], ABIR, LR-950-W-4.

[172] Westhaven Nursing Home v Building Service Employees Union #323A [1968], ABIR, LR-950-C-1.

[173] Misericordia Hospital v Alberta Division, Employee Pharmacists Association.

[174] Rockyview General Hospital v CUPE #1058 [1972], ABIR, LR-19-R-1.

[175] George McDougall Memorial Hospital v CUPE #1461 [1972], ABIR, LR-23-S-3.

[176] Smokey Lake Nursing Home v CUPE #1461 [1972], ABIR, LR-23-S-1.

[177] Beaverlodge-Hythe General Hospital v CUPE #1808 [1975], ABIR, LR-944-B-1.

[178] N.B. Cook Nursing Homes Ltd. v CUPE #8 [1975], ABIR, LR-945-N-1. These units were eventually not certified because the unit description would have contained no employees.

[179] Alberta Hospital v CUPE #1868 [1975], ABIR, LR-2405-V-1.

[180] Hardisty Nursing Home v Service Employees Union #323A [1975], ABIR, LR-950-H-1.

[181] Central Park Lodges of Canada v CUPE #41 [1976], ABIR, LR-339-C-1.

[182] Medicine Hat General Hospital v CUPE #189 [1976], ABIR, LR-88-M-1.

[183] Misericordia Hospital v CUPE #41 [1976], ABIR, LR-339-M-1, letter from Mr. Michael P. Ripko to Mr. Bill Purdy, MLA, 21 April 1976.

[184] An hypothetical example would be the influx of personnel associated with the computerization of hospital record keeping. They would no doubt be technicians, but they would certainly not be paramedical by any stretch of the imagination and their community of interest with the laundry workers would be minimal.

[185] St. Vincent's Hospital v Hospital Employees Union #180 [1974], CLRBR; Richmond Private Hospitals Ltd. v General Service

Employees Union, Richmond Heights Unit 1970 , BCDOLSOA; and Sandringham Private Hospital Ltd. v General Service Employees Union, Sandringham Unit [1970], BCDOLSOA.

[186] Trail-Tadanac Hospital Society v Hospital Employees Union #180 [1966], BCDOLSOA; and Fernie Memorial Hospital v Hospital Employees Union #180 [1973], BCDOLSOA.

[187] Bielkley Valley District Hospital v Hospital Employees Union #180 [1970], BCDOLSOA.

[188] G.W. Reed, *White Collar Bargaining Units* (Kingston: Industrial Relations Centre, Queen's University, 1969), p. 6.

[189] Renfrew Victoria Hospital v CUPE [1973], OLRBMR; Norfolk Hospital Association v London and District Building Service Workers Union #220 [1973], OLRBMR; and Windsor Western Hospital Association Inc. v CUPE [1973], OLRBMR.

[190] Beacon Hill Lodges of Canada Ltd. v Service Employees Union #210 [1972], OLRBMR.

[191] Komora Nursing Homes Ltd. v London and District Building Service Workers Union #220 [1973], OLRBMR; The Doctors Hospital v CUPE [1972], OLRBMR; Hamilton Blake Nursing Homes Limited v Service Employees Union #532 [1973], OLRBMR; and Providence Villa and Providence Hospital v CUPE [1973], OLRBMR.

[192] Extendicare Canada Ltd. v Service Employees Union #204 1972 , OLRBMR; and Canvalodge NursingHome v CUPE [1972], OLRBMR.

[193] Sack and Levinson, *Ontario Board Practise*, p. 75.

[194] Stettler Municipal Hospital v AARN [1968], ABIR, LR-940-S-4.

[195] Dustbane Enterprises Ltd. v CUPE #890 [1973], ABIR, LR-19-D-1.

[196] Grande Prairie General and Auxiliary Hospital and Nursing Home District #14 v CNA's [1975], ABIR, LR-552-G-2.

[197] V.S. Services Ltd. (Versaservices Division) v CUPE #812 [1975], ABIR, LR-1526-V-2.

[198] Scot Young (Western) Ltd. v CUPE #1231 [1976], ABIR, LR-21-S-1.

[199] Ibid., Reasons for Decision, 23 February 1976.

[200] Red Deer Auxiliary Hospital and Nursing Home District #14 v CUPE #838 [1976], ABIR, LR-220-R-1.

[201] Edmonton and Rural Auxiliary Hospital and Nursing Home District #24 v CUPE [1976], ABIR, LR-738.

[202] N.B. Cook Nursing Homes v CUPE #8 [1976], ABIR, LR-945-C-1, LR-945-B-1, and LR-945-S.1.

[203] V.S. Services Ltd. v Alberta Union of Provincial Employees [1976], ABIR, LR-2293-V-1.

[204] Calgary Auxiliary Hospital and Nursing Home District #7 v CNA's [1976], ABIR, LR-552-C-1.

[205] V.S. Services Ltd. v Alberta Union of Provincial Employees.

[206] Lethbridge General and Auxiliary Hospital and Nursing Home District #65 v CUPE #408 [1976], ABIR, LR-940-P-7.

[207] Sack and Levinson, Ontario Board Practise, p. 62.

[208] Modern Building Cleaning, Division of Dustbane Enterprises Limited v CUPE (Sensenbrenner Hospital), [1972], OLRBMR; Versa Services Ltd. v Building Services Employees Union #183 (Trenton Memorial Hospital), [1973], OLRBMR; Modern Building Cleaning, A Division of Dustbane Enterprises Ltd. v Building Service Employees Union #204 (Queensway General Hospital), [1973], OLRBMR; and V.S. Services v CUPE (Port Hope and District Hospital), [1973], OLRBMR.

[209] Dustbane Enterprises Ltd. v Hospital Employees Union #180 [1968], BCDOLSOA; and Versafood Services Ltd. v Hospital Employees Union #180 (St. Joseph's General Hospital), [1971], BCDOLSOA.

[210] Magrath Municipal Hospital v CNA's [1975], ABIR, LR-552-M-4.

Chapter 4

THE CONSTRUCTION INDUSTRY

The documentary evidence suggests that of the total time spent by the Alberta Board on matters relating to bargaining unit determinations, a significant portion involved issues specifically related to the construction industry.[1] The questions faced by the Board are of interest here not only because they required a considerable amount of time and effort, but also because the industry itself is unique in the field of industrial relations, as H.D. Woods has pointed out:

> There are special problems in union-management relations in the construction industry. This is so because of the nature of the industry itself which has produced a somewhat unique employer-employee relationship, and has contributed to the evolution of an unusual industrial-relations system in construction. The resulting problem for public policy is complex and baffling and has not yet been resolved to the satisfaction of the parties of interest or the public. However, in recent years there has been much activity in a number of jurisdictions directed to reshaping public policy in labour-management relations as it applies to construction.[2]

One of the jurisdictions in which Mr. Woods perceived "much activity" was Alberta. This activity was concentrated in two general areas. The first sphere of activity involved Board reactions to problems raised because of the changing nature of the construction industry itself, and public policy toward it. Decisions had to be made regarding such matters as the separate status of shop and field personnel, the status of various shapes and forms of supervisors, the bargaining status of new or seemingly new tradesmen, and the usefulness and scope of established bargaining unit descriptions. The second field of Board activity was directly related to a policy commitment, implemented through specific legislation, in favour of the encouragement of the formation of registered employers associations in the construction industry. The applications made to the Board under the legislation made it necessary for the Board to develop, justify, and enforce specific policy guidelines regarding the type and scope of bargaining units that would be deemed appropriate for use by registered employers organizations and the unions they would deal with.

This chapter is divided into three separate parts. The first part deals with the nature of the construction industry. Most of the problems faced by the Alberta Board were directly related to the peculiarities of the industry itself and, thus, an understanding of the problems is dependent upon some appreciation of the industry characteristics. The second part deals with the problems relating to the general changes in the industry itself rather than to any very specific public policy developments. The final portion deals with the issues and cases specifically related to the formation of employers organizations.

THE INDUSTRY AND ITS MOST RECENT PROBLEMS

Bargaining Structure--The Major Determinants

> Most of the peculiarities of the industrial relations system in the construction industry derive directly or indirectly from the nature of its product market. This market is plagued by many unusual features.[3]

The preceding comment by Goldenberg and Crispo clearly indicates that if one is to appreciate the industrial relations system of the construction industry, one must first appreciate the "unusual features" of the industry itself and, in particular, the uniqueness of the product market.

The construction industry is sensitive to general income movements while at the same time the demand for the products of the construction industry is rather insensitive to the prices of those products. The result of this combination, according to Goldenberg and Crispo, is that "within fairly broad limits, the volume of construction generated at any given level of national income is likely to go ahead regardless of the price of those works."[4] What this really means is that, as the record has repeatedly shown, demand for construction is characterized by a classic "boom or bust" pattern. The real frustration lies in the fact that neither the "boom" nor the "bust" is related directly to anything under the control of those in the construction industry. There appears to be little that the industry itself can do about the pattern, other than be prepared to adjust to such shifts in demand.

The construction industry is also seasonal. The volume of work fluctuates markedly during the year with activity levels down considerably in the winter. The problem is particularly acute in Canada where the winter slowdown is great because of the severity of the winter in many regions. Time is thus a key element in the collective bargaining relationship. The work season is short in comparison to other industries and, consequently, the potential damage of a work stoppage is great. Things must be decided quickly and smoothly as long delays can mean missed deadlines for employers and an even shorter work season for employees.[5]

Extreme mobility is a dominant characteristic of the construction industry and it is directly related to the nature of the product. The industry must move because of the single location nature of the product. Each project takes place at a single, unique location. Each project is itself unique to a certain extent. The combination of materials and skills needed to complete each project vary as much as the desires of those who demand the services, and thus the potential for standardization is minimal. This difference in size, cost, and complexity between construction projects also makes it very difficult to take the work away from the on-site workmen and place it in the hands of some employee at a single location manufacturing operation.

These three major characteristics of the construction product market--its seasonality, volatility in the sense that demand fluctuates widely, and the lack of homogeneity among the offered products--combine to make flexibility the absolutely essential ingredient for success, whether individual or corporate, in the industry. Both employers and employees have adapted to this need for flexibility.

Construction projects, except for the few very large ones, do not last that long. The construction employer must therefore be mobile and flexible enough to adapt to the needs of each new location. Goldenberg and Crispo saw specialization as the logical result of this need for flexibility:

> To meet these prerequisites and thus to survive in the industry contractors must specialize. Specialization occurs at both the general contractor and trade or specialty contractor levels. Among general contractors, for example, relatively few firms operate both in residential and in the commerical or industrial ends in the industry, and even fewer work in such disparate areas as road building and marine construction. Similarly it is uncommon, except in smaller localities, to find subcontractors who specialize in more than one or two related trades. Specialization at every level makes it possible for the individual contractor to concentrate his resources in a limited area where he can count on meeting the full range of requirements. Each contractor tries to

> keep his operation mobile and flexible enough to move from site to site as his specialized skills are needed and to maintain a regular volume of work.[6]

This specialization means that in general, the industry is made up of a large number of small or medium-sized firms. This large number of firms, as Dunlop observed, makes the industry rather competitive:

> By many of the criteria used to classify product markets, construction is a competitive industry. There are a great many enterprises selling construction services; there is widespread freedom of entry, and even specialized branches of the industry confront competition from contractors that move from one branch to another. Thus homebuilders may expand into school and commercial construction and mechanical specialty contractors in commercial work may shift into industrial construction.[7]

But this specialization also creates a high level of interdependence, particularly on larger projects. Each part of the project must be completed at a certain point in time. Each part is dependent upon the completion of other work, and subsequent work is dependent upon completion of it. For the project to be completed on time (and, thus, likely on budget) each link in this chain must be strong; a disruption anywhere along the line can stall the whole operation, and such a disruption can mean financial loss for all parties involved in the project. The employer side of the collective bargaining relationship is thus faced with a deep-rooted tension. Each employer is involved in a competitive situation while at the same time there exists a general realization that in many instances one firm's mistake will likely cost everyone.

The flexibility-oriented nature of the environment in the construction industry also affects those who must work as employees in the industry. This influence was well summarized by Warren Winkler:

> The construction industry is characterized by the fact that job organizations and working crews are rapidly formed and liquidated depending upon the number of jobs that an employer has

> underway. Only a nucleus of key personnel are maintained in employment in the interval between jobs. Workmen are generally hired on a job-to-job basis depending upon the amount of work under contract. During any given work year a workman may be employed by several contractors on several job sites and, as a rule, no permanent employment relationship is maintained. Each craft comes on to a job and performs its portion of the work at different times, increasing to a peak number of workmen and decreasing as the job proceeds, perhaps disappearing altogether for a time and returning to finish tasks at different points in the construction process. Each craft may peak at a different time since the production process invariably requires different crafts at different times. Workmen are more attached to their trade in a particular geographical area than to any employer.[8]

Employees[9] in the construction industry do not have the traditional one-firm focus that prevails in most other industries. Such a focus is impossible given the varying nature of the work location and the employer. The focus thus becomes the work performed, the craft or skill. It is this that is constant regardless of employer or project and it is this that must be controlled if the individual employee is to achieve any measure of security in this singularly insecure industry.

This employee focus on craft or skill, combined with employer specialization, has produced the single most distinguishing feature of construction bargaining structure: the reliance on the craft form of organization. The craft union is the organization focus for the employee. It is only because of an asserted jurisdiction over a particular type of work that a craftsman receives employment, and the continued operation of a strong craft union is the only way such a craftsman can assure himself of continued employment. The short duration of the employer-employee relationship also mitigates against the employer's involvement, to any great extent, in any employee "benefit" activities that are taken for granted in many other industries. The employee must look to the union to provide such services.[10] This lack of regular long-term employment also pervades the attitude of the contractor. A specialty contractor knows that he cannot provide regular employment, but he also knows that he occasionally needs a certain type of worker, and that it is to his advantage if there exists an organization that provides a central pool of exactly the kind of labour needed. The craft union is just such an entity. (The contractor need only bargain with and deal with one relatively small organization whose executive will likely understand his particular problems. In some cases, the contractor may even be a former union member.) The union is thus the stabilizing influence. It provides a focus for the employees in an industry where no other exists, and it provides a more predictable source of labour for the employer.

Unfortunately, it is impossible to superimpose this rather neat employer-craft union arrangement upon the picture of the whole construction industry. To this point is has been assumed that "construction" meant a single, identifiable sector, but in actual fact there are many sectors within the industry. Each sector faces unique needs and problems, and each has naturally adapted its industrial relations system accordingly. Goldenberg and Crispo commented on the differences between sectors:

> In the first place, the environment within which the parties must interact varies between sectors of the industry. Road building is a world unto its own if only because in most parts of the country it has a short working season. Similarly, pipeline construction has its unique labour relations problems, especially on major long-distance jobs which require crews to work for days, weeks, even months, in isolation. The point is that to some extent every segment of the construction industry is troubled by peculiar environmental factors. These almost invariably become part and parcel of the industrial relations setting.[11]

That there is no neat and tidy bargaining structure for the construction industry should hardly be surprising. The key to this analysis has been the need for flexibility, and a single structure could hardly serve that need, though it could be argued that the diversity found in the bargaining structure of the construction industry far exceeds that required in order to maintain flexibility. The extent of unionization, of employer cooperation, both among themselves and with the unions, and the scope of collective bargaining differes markedly between sectors of the industry.[12] The scope varies both in terms of the issues discussed in bargaining and in terms of the geographical scope of the resulting settlement.[13] Even the apparently ever-optimistic Goldenberg and Crispo could find little in the way of an encouraging overall pattern in construction bargaining structure, neither at the beginning of their work:

> The most striking feature of collective bargaining in the construction industry is its bewildering fragmentation. Added to the natural sectionalization of the industry, the varying coverage of the unions and the widely different scope of bargaining are the complicating byproducts of these features: union multiplicity and consequent jurisdictional disputes; the lack of unity and cohesiveness of unionized contractors both within and between the trades; and the seemingly never ending rounds of staggered trade-by-trade negotiations, characterized by partial shutdowns and whipsawing.[14] The industry simply is not consistent in collective bargaining.

nor at the end:

> The collective bargaining system in the construction industry can scarcely be said to present a neat and rational appearance. Every conceivable type of interrelationship may be found and there is often seemingly little rhyme or reason, let alone logic, to the pattern that prevails.[15]

Challenges to the Existing System

The existing bargaining structure in the construction industry has been challenged in two ways. It is alleged that the system produces far too much instability. The tremendous importance of many of the projects undertaken, and the increasing role of public monies in such projects, makes the existing level of instability simply intolerable. It is also alleged that the existing structure is itself inefficient and cumbersome, and that the accepted positions of many groups within the system imposes further inefficiency on the construction process itself. The construction industry provides a basic need, and the tremendous increase in the costs of meeting that need indicate that all available methods for increasing the efficiency of the industry must be utilized; "it would be irresponsible to recommend measures restricting changes which would enable the industry to discharge its obligation more efficiently."[16]

The "bewildering fragmentation" of the construction bargaining structure is certainly not characteristic of a stable bargaining system and the fact that the industry itself has done little to change the situation has raised the distinct possibility that government intervention may result. The clear public policy bias is toward stability and continued instability in construction can only result in the industry finding itself in conflict with one or more government bodies. The answer to the challenge is clearly a greater centralization of the industrial relations function. The tremendous freedom traditionally available to small unions and smaller employers must be curtailed. These groups must overcome old rivalries and suspicions and work together toward developing a system they can live with; the alternative is to have an imposed system that someone else thinks they can live with. H.D. Woods observed some encouraging signs of movement in this direction:

> In summary it can be said that the construction industry is gradually replacing the old autonomy of the individual employer-contractor on the one side and the independent union on the other by systems of bilateral collectivities. In doing so it is transferring authority and the decision-making role from the individual employer or independent union to these collectivities,

and working out new responsible relationships between these higher-level institutions.[17]

This attempt to increase stability through the formation of "collectivities" is also subjected to criticism on the grounds that such institutions decrease considerably the amount of competition in the industry, particularly in sectors where ease of entry is not great and the number of influential unions is small. Such an accusation is certainly open to question. Goldenberg and Crispo felt that "the most effective way to guard against any such possibility is to ensure that both contractor associations and unions are open to qualified members."[18] and also that a more rational and well-planned growth rate for the industry, without the "roller coaster" demand cycle, would do much to alleviate the threat of collusion, particularly when demand is high. It is simply not rational to expect the industry to create a more stable institutional structure if it is still to be subjected to the same highly unstable market conditions of the past. If such outside forces are allowed to operate, then adjustments would have to be made within the more centralized structure, and such "adjustments" may indeed affect the competitive nature of the industry.

The existing bargaining structure has also been attacked on grounds that it promotes inefficiency. Each trade stoutly defends its work jurisdiction against any threats from technological advances, and this defense usually means the maintenance of existing work practises, "however irrelevant these may become because of past or impending changes."[19] Critics of this practise acknowledge that the environmental influences on the construction industry do dictate a prominant role for the craftsman,[20] but they also argue that there is a need for acceptance of applicable work practise changes when they are required; such changes simply must be made. Critics also point out that the time, effort and resources spent in attempting to resolve the work jurisdiction disputes that occur because of the positions taken by various crafts,[21] and in actually negotiating the multitude of agreements that characterize the existing system, could certainly be better used. The results simply do not justify the resources and time invested.

More specific criticisms can be and have been directed to separate sectors of the industry, but in general most remarks can be classified as either a comment upon the unstable nature of the system or upon the structure's effects on overall efficiency and worker productivity.

The criticisms of the industrial relations system in construction, and the subsequent solution of greater centralization, had clear implications for the standard construction bargaining unit. The unit had to become larger in terms of the geographic area covered, and it had to encompass a broader range of the construction work force. The locus of collective bargaining authority had to move much further up the industry organizational "chart" in order for those involved to be able to get a broader, more long-run perspective on where the industry was and where it was or should have been going.[22] In short, the industry bargaining structure had to become more "industrial" and less fragmented.

Such sentiments were no doubt suitably honourable, but the proposed shifts in the structure of the construction industrial relations system were in direct opposition to the existing structure, that being a single craft, local area (in general) fragmented bargaining structure. The period covered by this study coincides rather neatly with the initial attempts by the industry itself and public bodies like labour relations boards to modify, either through direct legislation or through shifts in policy, the existing bargaining structure.[23] Views on what changes should be made, if any, and how they should be made (in particular, to what extent should labour relations boards get involved) naturally vary between jurisdictions, but changes were made. As Woods pointed out at the beginning of this chapter, "there has been much activity in a number of jurisdictions", and it is to the activity in Alberta in particular that we now turn.

RECENT ALBERTA EXPERIENCE

The Legislative Context

Several additions to the comments made in regard to legislation in the craft unit portion of this study are warranted at this time. The peculiarities of the construction industry have been recognized to some extent in the legislation relevant to the scope of this study and an appreciation of this legislative context is indispensable to an understanding of the actions of the Boards.

The most complete recognition of the unusual problems associated with construction is found in the Ontario legislation. The Labour Relations Act has a special part devoted exclusively to the construction industry. Sections 106 to 124 deal only with construction issues, and several portions of these sections are worthy of attention. Special definitions are provided for the terms "employer"[24] and "employee",[25] with the latter allowing for the fact that all those in the construction industry are not found working on the site. The definition of a "trade union"[26] restricts the term's application to those who normally "practise" in the construction industry. The Ontario Board is restricted in its unit determination decisions by Section 108(1) which makes it mandatory that the Board "determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it shall not confine the unit to a particular project." This restriction, combined with the provisions of Section 6(2) mean that the Ontario Board must recognize established construction crafts and it must grant such crafts "area" units. The Ontario legislation also contains specific provisions for the registration of employers' organizations.[27]

The legislation in British Columbia does not have a special construction section like that found in Ontario. Like the Ontario statutes, though, there is a definition of a "dependent contractor"[28] that clearly is applicable in the construction industry. There are also provisions for the creation of councils of trade unions[29] and a construction industry advisory council that would "examine labour-management relations in the construction industry or other industries."[30] The British Columbia Board is required to certify craft units if the unit is distinguishable, the union pertains to such a unit, and the unit is otherwise appropriate,[31] but the geographical restriction placed on the Ontario Board is not found in the British Columbia statutes. The legislation also has provisions for employers' organizations, though they are not seen as being necessarily associated with the construction industry.[32]

The Alberta legislation provides for the registration of employers' organizations[33] in the construction industry, as well as for the establishment of a work jurisdictional committee for resolving disputes over the assignment of work,[34] but there are no special provisions, definitional or otherwise, in regard to bargaining units and the certification process. The Alberta Board is free to create whatever type of unit it deems suitable given the situation at hand.[35]

The tremendous diversity in the nature of the decisions made by the Alberta Board in the construction industry makes it difficult to group the decisions, for analysis purposes, into totally logical or even fairly neat units. Excellent arguments could be made for placing a given case in any number of categories.[36] Two very general groupings do emerge that, though far from ideal, do allow one to get some sort of "handle" on the data. A number of decisions were made on questions that were not totally confined to the construction industry, though the nature of the industry certainly did add an additional dimension to the problem in some cases. Such issues as the status of foremen and other supervisors, the nature of applicant unions, and the exclusion of non-supervisory personnel from a proposed unit, are examples of such questions. A second, and much larger, cluster of decisions were much more closely related to the "technology" of the construction industry. Jurisdictional questions related to unit descriptions, the status of field and shop personnel and the question of new trades would be issues properly categorized under this heading. The latter group will be examined first.

Technology Influenced Decisions

The shop-unit; field unit controversy. The general practise among labour relations boards is to place office and plant workers in separate units, and the practise is easily defended on the grounds of the clearly differing communities of interest held by the two groups. In the case of Caproco Corrosion Prevention,[37] the Alberta Board's policy on such matters was well illustrated. Two applicants sought units, one an all-inclusive unit, the other a unit specifically excluding office workers. The all-inclusive unit was justified on the grounds that:

> . . . although it had been board policy not to grant certification to a bargaining agent embodying both plant and office employees, in this instance the executive of applicant "B" felt that its bargaining position would be much less strong if certification were granted for less than an overall unit and that applicant "B" could successfully bargain for an overall unit.

The Board rejected the all-inclusive unit because of lack of community of interest:

> The Board, however, did not feel that there was any justification for altering its policy which is based on the fact that the community of interest between office employees and plant or shop employees is not sufficient to establish an overall unit as being appropriate for collective bargaining.

This question of office worker-production worker separation is not generally an issue in the construction industry, but as might be expected, a variation on this theme has caused difficulties. This variation is the question of the separation of field workers and shop workers. Those familiar with the industry are no doubt aware that many companies operate a "shop". This shop may employ workers who only repair and maintain the equipment used by the company; the workers may also manufacture simple machinery or specialty items needed by the company and they may even fabricate actual components of the structures being erected by the company. Difficulties arise in the placing of these workers. There are valid arguments for both their inclusion in and exclusion from "field" units.

The number of workers involved is usually small in relation to the size of the work force in the field,[38] raising questions of excessive unit fragmentation when it is proposed that the group be placed in a separate unit. The work performed in the shop is often very similar to that performed in the field, and thus the bargaining agent for field and shop workers is often the same, raising doubts about the utility of separating the two groups, given the likelihood of an informal amalgamation. The workers are also very much a part of the construction process, regardless of the particular function they perform. Their work is clearly functionally integrated with that of the field workers, making it unwise to place them in a separate bargaining unit.

There are also several points to be raised in favour of a separation of "shop" personnel, the major one being the lack of "seasonality" in the shop environment. The weather has little or no effect on the level of shop activity and, in many cases, the attempt to catch up on maintenance and repair projects left over from the summer creates a flurry of activity in the winter months. The shop is also a single location. The mobility and adaptability needed in the field are just not necessary in the shop. Though the work performed in the shop may be similar, the conditions of employment differ markedly. Two of the major distinguishing environmental characteristics of the industry--its seasonality and job site mobility--are absent in the shop context. This absence does create a different community of interest; whether this difference is distinctive enough to offset functional integration and similar work activities is the moot point.

The question of the relative status of shop and field workers in Alberta appeared to crop up in three general areas: ironwork related to the assembly and fabrication of machine and building components, concrete work related to the fabrication and erection of prestressed concrete work, and general shop and warehouse work associated with the operation of a general construction company.

The Alberta record indicates that in work associated with ironwork, the Board has created units of shop employees only, field employees only, and units that included both types of workers. At Alem Construction,[39] the Board certified a unit of "all hourly rated shop employees" except office staff and foremen, and at Rocket Welding Contractors,[40] the Board approved a unit of "shop employees who are employed in or about the shop excluding office staff." In the case of National Tank Ltd.,[41] the question was complicated by the fact that in some instances shop workers did venture into the field to perform specific tasks. The major problem in this case was caused by the fact that the company was on the borderline between manufacturing and construction. The firm did manufacture tanks and other equipment for installation by others, but it also occasionally sent workers into the field to repair and/or install its own products. In this particular instance, the applicant sought a unit of field workers based on a short-term field job undertaken on a company product in Fox Creek. Counsel for the company, Mr. A.O. Ackroyd, protested the proposed unit as follows:

> Mr. d'Esterre, the current chairman of the Board, indicated in a previous application several months ago by the same local respecting Black, Sivalls and Bryson Ltd. that the Board was not disposed to granting "gopher" applications. By that the writer took him to mean that if employees "poked their head out" in the sense of being employed for a very brief period of time on field

> work, the Board might not grant an application for certification arising out of such a very brief bit of employment. . . .
>
> . . . It is submitted nonetheless that the above case is authority for the proposition that the Board, in considering whether or not a unit is appropriate for collective bargaining, may have regard to such factors as a very small number of men being involved for a very short period of time and the unit being non-existent as of the date that the board is considering the application.[42]

Mr. R.T.G. McBain responded to the above arguments on behalf of the applicant. It was first pointed out that the general construction characteristics were more pronounced:

> . . . in steel fabrication and erection carried out in the field. Vessels and machinery were often fabricated in the shop and erected in the field, and, just as frequently, are fabricated in the field. However, it is obvious that field construction generally demands a different collective agreement because of the differing interests of field employees as contrasted with shop employees.[43]

Perhaps being aware that the separate unit for field workers was not as "obvious" a principle as he would have liked to believe, Mr. McBain carried on with several other points. He argued that the Board had previously recognized separate field units (which it had), and that the nature of the construction industry made the short-term nature of the project under question irrelevant: the short-term employment site was the rule rather than the exception, as was the temporarily "empty" unit. The size of the unit was also of no consequence, since small companies and small units were also the general pattern in the industry as a whole.

The Board apparently felt that the unit was too small and temporary and the company too much on the "fringe" to grant the fragmentation "benefits" of being in the construction industry, for the applied-for unit of field workers was rejected as inappropriate and the position of the shop unit reinforced. At Alberta Tank Ltd.,[44] Murdock Production Equipment Ltd.,[45] and Dresser Industrial Products Ltd.,[46] the principle of shop units in such "fringe" companies was reinforced with such units created in each case.

Where the "gopher" phenomenon did not appear as a consideration the Board did not seem averse to creating units of iron workers specific to field work only, whether the company was a "fringe" operation, as in the case of Canadian Equipment Sales and Service,[47] or a clearly construction industry company, as in the case of Camwill Construction Ltd.[48] In the case of J.K. Campbell and Associates,[49] the question of the "gopher" was again raised, but this time the Board granted the "field employees only" unit. The employer argued that this situation was similar to that of National Tank, but the Board was not convinced. The Board noted in its reasons for decision that in this case the work was much less temporary than in National Tank, "there was no reason to doubt that similar work and workers would not appear in future," and a unit of iron workers specific to field work was certified. A similar philosophy appeared to govern the creation of a field unit of those iron workers "who perform field erection of pre-engineered buildings" in the case of Atco Structures Ltd.[50]

A combined unit is also apparently appropriate in some cases. At Universal Industries Ltd.,[51] the Board certified a unit of "all hourly rated shop and field employees . . ." without providing any reasons for doing same, and in another "fringe" case, the problem of the shop worker in the field was solved by including in the shop unit description the phrase "at or from the shop", thereby effectively creating an all-inclusive unit.[52]

The question of the possible separation of shop and field employees also appeared in the pre-stressed concrete sector of the industry. The use of pre-cast components has increased during the last decade, with companies producing the components in their own "shop", but also transporting and installing the finished products. In the case of Sargent Construction,[53] the Board made no distinction between field and shop workers, but in the case of Supercrete (Alberta) Ltd.,[54] the work described was specifically restricted to "off plant premises," which appeared to reflect the overall policy of the Alberta Board for this sector of the industry. At Con-Force Products Ltd.,[55] the unit was restricted to "all employees of the company who are directly engaged in any and all phases of fabrication, manufacturing, and erection of all pre-cast, pre-stressed, post-stressed and all related work in connection therewith of the company's product, off plant premises. . .", and at Con-Force Ltd.,[56] the Board restricted the scope of a unit of carpenters to the plant site. In the latter case the actual intended scope of the unit was brought into question when the Board, after restricting the carpenter's unit to the plant, refused to grant the same bargaining agent a unit for field workers only on the grounds that "certain classifications described in the application fell within the scope of the unit of employees set out in Certificate No. 86-68" (the previously narrowed unit). The Board did not think that the unit of field workers only would be "a separate and distinct unit at all times," implying, of course, that the previously certified unit of plant workers was not distinct either.

Another dimension is added to the shop-field unit conundrum in the case of large general contracting firms. These firms do not operate a "shop" in the sense that smaller companies do, but instead the single location operation involves warehouse and storage facilities as well. The question then becomes not so much whether the field and "shop" units ought to be separate, but how the shop unit should be structured. In such large operations there may exist a great number of occupational categories--should one impose the fragmented structure of the construction field service, or a structure more closely resembling the industrial model?

It would appear that the work jurisdictions of the established crafts are maintained, as evidenced by the following unit certified at Brown & Root Construction Ltd.[57]:

> All truck drivers, bus drivers, and warehousemen working in or out of the Edmonton yard and fabrication shop, excluding employees engaged in Industrial Projects, Supervisory staff, and employees engaged in the handling or testing of materials and equipment normally handled or tested by members of other trades.

With the jurisdictions of other trades being recognized, the question becomes one of what to do with those left over, the "tag-end" unit? In this case the company (Brown & Root) did not think the unit was appropriate:

> We feel Warehousemen should not be included in the unit because Warehousemen and Truck Drivers at our Edmonton Yard are not a compatible group for bargaining purposes.
>
> Our Warehousemen are permanently located at our Edmonton Yard whereas our truck drivers spend most of their time travelling away from our yard and this situation results in very different working conditions and environment.
>
> In addition, our Warehousemen perform primarily a clerical record-keeping function and are employed in a Salaried Staff position. The salaried staff position with our company provides the employee with such fringe benefits as a pension and Group Medical and Life Insurance.
>
> It is for these reasons that we feel our Warehousemen should be given the opportunity to decide as a separate group who they want to represent them for bargaining purposes.[58]

The question of how to structure this tag-end group also appeared in the case of Ralph M. Parsons Construction Ltd.[59] The applicant sought a unit of "warehouse clerks, material clerks, material expeditors and material engineers," The company did not approve of the proposed unit. Management claimed that the warehouse "clerks" were only part of a larger body of clerks working in several company departments and that such clerks were really a part of the much larger "office personnel" group. To separate those working in the warehouse was not conducive to sound collective bargaining. In this instance the Board agreed with the company and the proposed unit was rejected, but such was not the case at Alberta Concrete Products Co. Ltd.[60] Here, the applicant sought a unit comprised of "all warehousemen and warehouse pick-up drivers, excluding all supervisory employees, office staff, mechanics, truck drivers (other than warehouse pick-up drivers), and labourers". The Board certified the unit as applied and received for its troubles the following statement from the company solicitor, Mr. A.O. Ackroyd:

> Your board must obviously be aware that the decision to carve out a unit of 4 employees from a work force of some 620 amounts to an unprecedented departure from earlier policies of this board in determining what is an appropriate unit . . . .[61]

The issue here, as in the case of the iron workers, was really whether the operations in question were sufficiently "construction" in nature to warrant the fragmentation associated with the industry.

The issue of the relative positions of shop and field personnel was sufficiently complex when the companies involved were clearly in the construction industry, but the problem now would appear to have been complicated by the additional problem of deciding whether the whole issue can be debated in the context of the construction industry at all. In the cases involving ironwork and concrete pre-fabrication, the question at the root of the debate was really whether the firms involved were manufacturing entities, in which case the industrial model was clearly applicable, or whether they were still predominantly "construction" companies in which case tradition would seem to dictate a recognition of the craft structure. Even in cases where the company was clearly a construction company, the portion of the enterprise under question resembled a warehouse operation more than a construction operation, making it plausible to apply an industrial-type bargaining structure.

The practise in Ontario was to "consider separately the construction industry and the non-construction industry operations of the employer and to exclude shop and yard employees from the construction unit,"[62] but the functional integration of the two locations was recognized in 1970 with the addition of provisions for the inclusion of off-site personnel in construction units.[63] There is no evidence to suggest that the issue has caused any problems since. The standard description merely states that the unit is to include all employees of the employer in a certain geographical area.[64] Since "employee" now includes shop employees, we must assume that they are included in such units unless the parties choose to do otherwise.

Bargaining unit descriptions in British Columbia do distinguish between shop and field employees. Examples of units specific to field workers can be found,[65] as can units including only shop workers,[66] and units that include those "at and from" a particular location.[67] In British Columbia, as in Alberta, the decision appears to vary depending on the nature of the company and its particular position vis-a-vis the construction industry, with the "at and from" and shop units likely to occur in situations where the company is not that clearly involved in construction field work.

The alternative solution to the shop-field unit problem, but one that flies in the face of tradition, is to simply include in the unit all the employees of the employer regardless of their craft differences or location of employment, but this policy, too, runs afoul of the diversity found in the industry. The Alberta Board, in cases like McKinley and Taylor Ltd.,[68] Ralph Eerkes Painting and Decorating,[69] Sparrow Electric,[70] or F & S Painting Ltd.,[71] seemed quite willing to certify all-employee units, but in such cases the issue was simplified by the fact that the company involved was really only participating in one very small portion of the construction industry (painting, electrical, sheet metal) meaning only one type of craft employee was likely to be found in the enterprise with only one bargaining agent likely a suitable representative. (With such small firms, the size of the shop is also likely to be very small, making it unlikely the unit would make up a viable bargaining unit even if it were certified). In cases where several crafts are involved, the strength of traditional rivalries can often complicate the question. At John Guzowski Plastering,[72] the all-inclusive unit was not workable because the description included classes of workers traditionally granted separate bargaining rights, but, alternatively, at Twin Bridges Sand and Gravel (1960) Ltd.,[73] the employees association had built up a sufficiently strong identity to resist the "raid" attempt of a traditional craft union.

The question of the appropriateness of an all-employee unit was recently faced in British Columbia in the case of Chimo Structures Ltd.[74] The case was illustrative of the difficulties encountered in determining the appropriate bargaining structure when one approaches the "fringe" of the construction industry. The company produced modular buildings with a work force made up of a number of traditionally separate crafts including carpenters, sheet metal workers, plumbers, and electricians. Through a Board error, two units were certified, one for the whole operation and another for just the plumbers. The Board was then forced to review the two decisions and decide which would stand, the industrial-type unit or the traditional craft unit. The plumbers argued that the work done on the single location was as much "construction" as that being done at any other site. The work was done in accordance with the same building codes and standards, by the same journeymen who had been and likely would be again working on "normal" construction sites. The men even had plumbing apprentices helping them. The carpenters, who held the larger unit, argued that the production process blurred the traditional craft lines, that there was some interchange between jobs that would not be found on a normal construction site and that the "apprentices" the plumbers claimed to have in fact helped other workers in the plant--another practise that would not be found "outside". The carpenters also pointed out that their union had recognized the differences in working conditions by creating a separate local to represent workers in such "quasi-construction" establishments.

The Board allowed the larger unit to stand, cancelled the smaller craft unit, and in doing so commented that:

> The evidence clearly shows, too, that the employees are, to a certain extent, interchangeable and that trades do not have their work strictly delineated as would occur in the construction industry. . . . The policy of the Board is well established that the most appropriate bargaining unit in the circumstances of this plant and this industry is one integrated plant unit already certified to the carpenters.[75]

The Ontario Board has also recently faced the question of deciding upon the appropriateness of an all-employee unit in the construction industry. In the case of Peniche Construction Forming,[76] the Board faced the question of whether "all company employees involved in concrete forming construction" was an appropriate unit. The Board's decision was crucial because the sector of the industry involved had not been organized before and the type of unit deemed appropriate would no doubt affect future activity in the sector. Using criteria later adopted by the British Columbia Board, the Ontario Board decided the larger unit was appropriate because the interchange between employees was extensive enough to wipe out the usually clear craft lines. The case did not establish any hard and fast rules however. In the Canwall Contractors Ltd. case,[77] the Board rejected the intervenor's plea that the appropriate unit was an all-employee unit. The Board pointed out that:

> . . . such units might well lead to jurisdictional disputes, particularly where only one or two trades are employed at the date of the making of the application or where an employer decides to expand the scope of his business.[78]

The question of the appropriateness of a broader unit was faced by the Alberta Board in the case of C.F. Braun and Co., where the applicant already had a warehouse-oriented unit made up of:

> Truck drivers, bus drivers, warehousemen, warehouse helpers, warehouse fork lift operators, truck and warehouse foremen excluding supervisory staff with the right to hire and fire and employees engaged in handling or testing of materials normally handled or tested by members of other trades.[79]

The proposed revision to the above unit would have made it read as follows:

> All non-manual support personnel excluding Draftsmen, Engineers, Inspection Personnel (quality control), Management Personnel and all other employees engaged in the handling or testing of material and equipment normally handled or tested by members of other trades.

The proposed use of the unusual phrase (for the construction industry, at least)--"non-manual support personnel"--appears to have caused some difficulties. The employer protested the proposed unit description because the unit would not fit within the confines of the applicant's constitution; the diversity of interest of those who would be encompassed by the unit was simply too great to make the unit appropriate for collective bargaining--some included in the unit were managerial personnel with access to confidential industrial relations information and "the proposed unit description (was) unwieldy and confusing and would inevitably lead to further difficulties in its interpretation."[80]

The Board apparently agreed with the employer's contentions, for the unit was rejected as inappropriate. The Board differed with the applicant on just who was encompassed in the term "non-manual support"; the Board claimed some of these people were excluded by the proposed unit and thus it was not appropriate. The Board also declined to "re-write" the unit for the applicant.[81]

The validity of the points made in support of either side of the shop-field unit debate have apparently made it difficult for labour boards to generalize in this area. The record of the Alberta Board is a clear example. In situations where ironwork was involved, the Board certified shop units, field units, and general units, the final decision apparently dependent upon the nature of the company involved. The Board considered the "temporariness" of the work involved in field unit applications which was, in effect, a way of deciding whether the firm was actually predominantly construction or not. In the case of concrete-related work, the Board appeared concerned about the "distinctiveness" of the two units or, in more common terms, the degree of employee interchange. Again, the question really was to what degree the employees were involved in "construction" as opposed to "manufacturing". The situation was more complex than that of ironwork because the company was often clearly involved, to some extent, in both industries. The question was distilled down to what extent the employees themselves were confined to activity in one sector or the other, with little interchange making it possible to separate the "construction" workers. A group caught in the middle, being clearly not construction field workers, but also not clearly "shop" workers in the normal sense of the word, were those working in the warehouse divisions of large construction companies.[82] The case at hand would appear to be the determining factor here, with arguments available for including such people in office units, in general units of single location workers, or in separate units of their own.

A common theme is evident in all three groups of cases considered in this section: that of diversity and the difficulty of comfortably classifying the firm or portion of a firm in each case. In the cases where the company was clearly a "painting" firm, or a "plumbing" firm, the question of the proper unit appears to have never been in doubt; the traditional groupings applied and there were no problems. But where the company had responded to the construction environment by involving itself in many phases of the industry, as with the concrete-oriented firms or the large general contractors, or by involving itself in both shop and field operations, as in the case of those involved in ironwork, the old methods and patterns were not as easily applied as was well illustrated by the acknowledgment in the Ontario legislation that those confined to the single location may still very well be part of the "construction" industry.

These hard-to-classify, "fringe" companies have required, and will continue to require, the Boards to search for different unit configurations, and the tremendous fragmentation in the industry leaves the Boards with really only one direction to move in: towards the larger, more inclusive units, and the move is no doubt a difficult one. Even where Boards combined single location and field employees, they were still doing so along established craft lines; the larger units clearly threaten these old precepts. Tentative steps have already been made in Ontario and British Columbia where, under particular conditions, all employee units ignoring craft lines were certified, and similar moves in similar areas have been made in Alberta.[83]

Work jurisdiction problems. Whether attempts to use more all-inclusive units are successful or not in the more ambiguous situations, the predominant form of organization in the construction industry will likely remain the craft unit for quite some time to come.[84] In defining craft bargaining units, labour boards inevitably, and usually reluctantly, get involved in the work jurisdiction conflicts inherent in such a bargaining structure. Edward Herman has pointed out the importance of the Board's role:

> A problem common to most Labour Relations Boards concerns the proper description of bargaining units in the construction industry. This issue is of great significance, since certifications in most jurisdictions are granted on the basis of crafts, and an improper description could lead to jurisdictional friction among the unions.[85]

In theory, it should be possible for the boards to remain "above" such intrigues by merely phrasing units in terms of well-accepted job titles (such as carpenters, plumbers, etc.) and thus leave the actual defining of what work is to be considered part of the title up to the parties involved. The following statement by H.C. French of the Alberta Board summarized the position of the Board:

> When the board certifies a bargaining agent the unit description must be complete in itself and cannot be dependent for its meaning on a union constitution or union jurisdiction as established between trade unions or other such conditions.[86]

In actual fact, though, the Boards do become involved in the jurisdiction issue. As the construction "technology" evolves, new types of work appear or variations on old themes are uncovered. Unions naturally seek to include such work within their jurisdiction and an effective way of doing so is to get Board recognition. A union may apply for a standard unit description, but the fact that the unit description is standard is meaningless if the workers involved are not clearly part of such a description. Other unions intervene, claiming that such work falls under their standard description, and the Board is immediately embroiled in a jurisdiction dispute, albeit at the certification stage.

Sorting out jurisdictional conflicts appears to have been a major concern of the Alberta Board. Despite the Board's clear preference for avoiding any reference to a union constitution or work jurisdiction in unit descriptions, applicants apparently still tried to include some occasionally. At Ralph M. Parsons Construction, the applicant sought the following unit:

> Millwright General Foreman, Millwright Foremen, Millwright Journeymen, Millwright Apprentices and Millwright Helpers, Millwright Riggers, Helpers and Apprentices, Millwright Machinists, Helpers and Apprentices, Millwright Welders, Helpers and Apprentices.[87]

The Ornamental Iron Workers intervened and complained that the unit was not appropriate because it set out jurisdiction of work rather than merely the classifications of workmen involved. The Board apparently agreed, for before certification the unit description was altered to "Millwright foremen, millwright journeymen and millwright apprentices." In the case of Marshall Lee Construction, the applicant made reference to the work jurisdiction in a unit that read as follows:

> All employees engaged in the laying, jointing, caulking and cleaning down of brick and concrete blocks, the cutting and laying of all natural or artificial stone and the jointing and cleaning down of all glass block work.[88]

Here, too, the reference to work jurisdiction was dispensed with as the Board narrowed the unit down to "all journeymen bricklayers and apprentices including working foremen."

The source of jurisdictional conflict is often an attempt, in the unit description, to include work that may not be clearly associated with any particular group. In the case of Alsask Steel Ltd.,[89] the applicant sought to include in an apparently ordinary iron workers unit, provisions for the loading, unloading and transportation of all ironwork-related materials. The Board deleted all references to such work before the unit was certified. At Prairie Climbing Cranes Ltd., the applicant applied for a unit described as follows:

> All foremen, journeymen, and apprentice ironworkers, for erection of climbing cranes, excluding operating engineers, technical supervisors, superintendents, other craft unions and those with authority to hire and terminate.[90]

The employer claimed that the applicant was exceeding prescribed work jurisdictions since its members "did not have the desired skill or attitude toward machinery to safely erect or load on transport Static Tower Cranes . . ."[91] In this case, the Board did not agree with the employer and the unit was certified as applied for, there apparently being no proof regarding the "attitude" of the iron workers. There were also attempts made to reverse an existing situation, to reduce the established position of an incumbent bargaining agent by asserting a claim over some of the work being done by bargaining agent members. At J.K. Campbell and Associates,[92] the Ornamental Iron Workers succeeded in obtaining a unit in a case where the company was already dealing with the Sheet Metal Workers. The solicitor for the company, Mr. D.J. Ross, pointed out to the Board the potential difficulties the new certification could cause:

> It appears to the writer that all the certification has insured is that J.K. Campbells will probably become involved in a number of jurisdictional disputes between the Iron Workers and the Sheet Metal Union in the future, as now the Iron Workers have an ability to claim rights with respect to the Campbell work force. It is certainly clear that the iron workers will not be able to obtain a Collective Agreement, unless their disruption of Campbell's work, through jurisdictional claims, is such that Campbell is forced into hiring and maintaining a complete Iron Worker unit within their operations.[93]

Mr. Ross also pointed out, one week later, that the overlapping jurisdictional claims of the two unions meant that in situations where work had been assigned to the iron workers before, without any problem, there would now be jurisdictional wrangles. He also pointed out that existing company contracts had not been bid with any allowance for the employing of iron workers, and that such allowances should not have to be made:

> We are astounded at the suggestion that any company must bid or take on work and have it performed subject to the Craft Union Agreements as to how work is to be divided amongst them. We would trust that the above quote is not an indication that the Board of Industrial Relations in this province has taken the position that the unilaterally-established work jurisdictions of the trade union movement must be accepted by employers, who then must have whatever work is involved completed by union members.[94]

The Board, in response to these statements on behalf of the company, altered the unit to encompass field work only, thus reducing, to some extent, the likelihood of jurisdictional conflicts. The Board was not so accommodating in the case of Rocket Welding Contractors.[95] The employer claimed the unit being sought was not broad enough, that the nature of the company operation made it necessary to include workers covered by another union local. It was necessary to add to the unit description the phrase "Pipefitters and Welders coming under the jurisdiction of Local 496" because:

> . . . along with vessels we also do pipe fabrication which requires Local 496 members on the job. Without this clause we would be limited in our field to Boilermaker work only and would cut down on our yearly sales and consequently the amount of people we could employ over the year.[96]

The Board left the employer to work out his work jurisdiction difficulties on his own and certified the unit as applied for. In the case of Tar Sands Machine and Welding Company,[97] the Board also declined to acknowledge jurisdictional implications in the proceedings. The Boilermakers applied for a unit where the Ornamental Iron Workers were already established. The Board acknowledged that some of the work being done might be construed as coming within the Boilermakers jurisdiction, but this jurisdictional fact was not important. The majority of those working in or out of the establishment were members in good standing of the Iron Workers who had a collective agreement with the employer. Majority support and the existing agreement were far more important than the applicant's jurisdiction claims, and the application was dismissed.[98]

A sector particularly fraught with jurisdictional difficulties in Alberta was the drywall industry. The tremendously vague demarcation lines and the large overlaps between several union work claims appeared to promote an ongoing jurisdictional dispute.[99] At Alpine Drywall and Plastering,[100] the Carpenters applied for a unit of "all employees except those with the power to hire and discharge and drywall tapers and finishers." The Plasterers immediately protested and demanded that the description be altered to specifically exclude plasterers. The Board refused to certify the unit and it also refused to rewrite the unit description to suit the Plasterers. The Carpenters then tried for a unit of "all Carpenters, Carpenter Apprentices, Carpenter Foremen, Drywall Applicators and Drywall Applicator Improvers". This time, the Lathers protested that the last two groups in the unit description were clearly an infringement on their jurisdiction. The Board dismissed the protest and certified the unit as applied for. A year later the Painters received a unit described as "all Drywall Tapers, Fillers and Finishers and Drywall Finisher Trainees."[101]

At George R. Byer and Associates,[102] the Lathers applied for a unit of "all journeymen lathers, foremen, acting foremen, and apprentices engaged in the application and handling of lathing and drywall materials." The employer protested vehemently. It was pointed out that the unit claimed virtually the same work that the Carpenters and Joiners claimed as theirs, and that "no union seem(ed) able to control the work in this area or (could) supply the necessary trained people because of jurisdictional disputes."[103] The phrase "and drywall materials" was deleted from the description and the unit was certified. The Lathers applied for a similar unit again at Abalon Contracting Ltd.[104] Here, too, the employer pointed out that the work was claimed by at least one other union. The employer proposed that "a separate type of tradesman should be developed that would be called interior mechanics which would encompass all these types of work."[105] The Board resisted this opportunity to complicate matters further by creating yet another craft division and instead certified a unit similar to that applied for. At Alco Drywall (Edm.) Ltd.,[106] the Board had approved the addition of building insulators to the standard carpenter's drywall unit--the creation of another craft in the face of such an attempt to consolidate units in the industry would hardly have been consistent.

The questionable wisdom of attempting to maintain separate and distinct work jurisdictions was recognized in British Columbia by the merger of the Carpenters and Joiners and the Lathers. The two unions had fought constantly over the right to apply gypsum wall board, the modern replacement for wood and metal lath. The dispute had even shut down a large part of the British Columbia construction industry in 1971. The merger was a recognition of the futility of the continual conflict particularly in the face of the very small and still declining membership in the Lathers' union. The British Columbia Board endorsed the move as "a logical response to the changed technological environment in that part of the construction industry."[107]

"New" trades. The changing "technology" of the construction industry not only provoked jurisdictional conflict, it also created a potential for the formation of new trades and/or the altering of traditionally-accepted unit descriptions to reflect the new environment. Examples of each are to be found in Alberta.

In the case of Prestige Builders Ltd.,[108] the Board sought to replace the term "labour foreman" with the word "pusher". The union disapproved of the change, largely because the older term had served well enough. The matter was apparently dropped by both parties at that point. In the case of Ralph M. Parsons Construction,[109] the applicant sought to include "survey employees and survey party chiefs" in the unit. The employer successfully argued that the party chiefs performed managerial functions and that even if one were to recognize "survey employees" as some sort of craft, they did not belong in a unit of Operating Engineers. At Honeywell Controls Ltd.,[110] the applicant sought to include in the proposed unit, as a recognized sub-craft, "technicians and service mechanics." The employer felt that such a proposal was ridiculous because the work done did not lie within the jurisdiction of the applicant's constitution; the applicant did not typically organize or supply such personnel; the workers were not craft-oriented; the workers had little community of interest with the others in the unit; they were salaried personnel and they were not admissable to the applicant union because of its constitutional provisions. Here, again, the Board recognized the employer's arguments and formal recognition was not granted to technicians and service mechanics. In the case of Scaffold Solutions (Alberta) Ltd.,[111] the Board also refused recognition to another sub-craft, in this case Scaffolders and Scaffolder Apprentices and Foremen as part of the standard carpenters' unit.

The position of the Board was not rigid, however. In the case of the Zimmcor Company,[112] the Board recognized an unusual unit, at least for Alberta, that read as follows:

> All employees engaged in the assembly, installation, and erection of all curtain wall, window wall, metal panels, panelling and corrolated work. (Excluding all glaziers and other trade unions, office staff, and those employees above the rank of foreman).

The Board noted that the company had similar units in its activities in the province of Quebec which seemed to be of some importance. However, in the case of H. Kenda Agencies Ltd.,[113] the Board rejected a very similar unit with the following comment regarding the importance of the work to the employer's operations:

> . . . the Board decided that the unit of employees applied for by the applicant does not reflect the nature of the respondent employer's business, nor the nature of the majority of the work performed by the employees of the respondent employer, and therefore refused to certify the applicant.

This question of the relative importance of the work described does not appear again as an important issue (the fact that the work is described in the unit description at all is evidence of the unusual nature of the unit).

Two groups of workers were particularly troublesome in this area of new trades or descriptions: truck drivers in the construction industry and those involved in testing and inspection services.

The recognition that truck drivers had received in other industries through their strenuous efforts at collective bargaining, made them likely candidates for separate recognition in the construction industry. Unfortunately two factors combined to make the question more complex. There already existed in the industry a strong union that claimed as its jurisdiction the machine-oriented jobs, namely the Operating Engineers. The truckers also tended to appear more often at the "fringe" of the industry and, as has been pointed out, the tradition of craft recognition is rather strained in such areas. At Burnco Industries Ltd.,[114] it was proposed that drivers not only be granted their own unit, but that dump truck and mixer truck drivers be separated as well. The Board was not convinced that the two separate units were appropriate, but a single unit for drivers only was granted. At Pioneer Paving Ltd.,[115] drivers were also granted separate units, as they were at Midvalley Construction,[116] and Superior Masonry Products Ltd.[117] However, at Revelstoke Companies Ltd.,[118] the drivers were placed in the unit that included yardmen and at Arctic Transit Mix,[119] the Board refused to condone fragmentation of the unit and grouped the drivers in with loadermen and batchers and mechanics. It seems likely that the pattern in the last two cases will continue, particularly in situations where the company commitment to the construction industry is not that clear.

The position of those involved in inspecting construction work was indeed a strange one. The Board appeared ready to recognize the group as a separable entity in the industry, but it became difficult to sort out just who had the authority to represent such personnel. At North American Inspection Services,[120] the unit of non-destructive testing technicians and radiographers was rejected because the Board doubted the authority of the union president to arbitrarily declare that the union had the constitutional authority to admit such persons. In the cases of International Radiography and Inspection Services,[121] Warnock-Hersey International,[122] and Western Stress Relieving Services Ltd.,[123] the Board saw fit to certify all-employee units, the first two for the Boilermakers, and the last for the Boilermakers and Plumbers combined, without any apparent difficulties. In the case of C.F. Braun Company of Canada[124] though, the employer protested against the certification of a unit of non-destructive testing visual inspectors on the grounds that the union constitution did not allow for the admission of such personnel, not because of their work, but because they were managerial personnel:

> . . . the work carried out by the members of the proposed unit

> is essentially a management function and as a consequence this unit should not be certified, at least with the representation of this particular union.[125]

The Board turned down the applied-for unit. Those who proposed to populate the unit visually inspected that which had already been tested by members of the relevant trade, an activity that the Board commented upon:

> It is the opinion of the Board that the employees affected by this application do not work with the tools of any specific trade, including the jurisdiction of the applicant, but are employees in what may be considered a non-manual capacity.[126]

Such non-manual personnel did not belong in a union made up of manual personnel. In the cases of Consolidated X-Ray Ltd.[127] and Conam Inspection of Canada Ltd.,[128] the Board rejected units of senior technicians on the grounds that they, too, did not fall within the jurisdiction of the applicant union.

The question of the status of inspection personnel is far from resolved, at least from an official point of view. The craft unions active in the field would appear to have made the necessary alterations in order to accommodate those who do the work with recognizable tools. Those who do not are apparently still in some sort of "limbo". They are clearly not managerial personnel, but they are also not manual in the sense of a construction tradesman either. They, much like the auxiliary nursing personnel in the health care sector, do not appear to have any particularly convenient "slot".[129]

The clearly sectoral nature of the construction industry, with the accompanying differences in working conditions and employer and employee interests between sectors, raises the issue of whether or not a certified bargaining unit should be confined to a specific sector. Labour Relations Boards have not generally approved of such a practise. An example is the following statement by the Ontario Board:

> The Board is of the view that it ought not to restrict bargaining units which are determined in certification applications to sectors.[130]

The position of the Alberta Board though similar does not seem to be nearly as rigid as that of the Ontario Board. At Northern Gravel Products,[131] the Board deleted the unit reference to roadwork, and at Wimpey Western Ltd.,[132] the Board refused to allow the unit to be specifically confined to the sewer and water main installation sector with the following comment:

> A bargaining unit of this description has been certified as appropriate for collective bargaining by this board on numerous occasions and the board is not disposed to change its established practise.[133]

The Board has, apparently, been disposed to change its practise under some circumstances. In the case of Catre Industries Ltd.,[134] the unit was restricted to "highway and heavy construction," apparently because of the company's position in regard to the bargaining of one or more employer's associations. In the case of Krahn Homes Ltd.,[135] the Board restricted the unit to "commercial and/or industrial work, excluding single-house projects." The reason given was that the apartment division of the employer's operation was sufficiently distinct to warrant its recognition on the basis of the Board policy of recognizing the nature of the employer's administration structure. There was no employee interchange with other divisions, the division did its own hiring and firing, set its own wage rates, and had its own totally responsible division superintendent. The Board was not prepared to ignore all other community of interest criteria in the interests of preserving the sectoral generality of the bargaining unit.

This first portion of this chapter points out that the construction industry is characterized, above all else, by the diversity found within its boundaries. This diversity was a direct result of the environmentally induced need for flexibility and adaptibility, and it is this diversity and the attempts made to adapt that underlie the problems discussed to this point. The tremendous differences between situations made the shop-field unit question a difficult one. Simple rules and guidelines could not be applied to firms ranging in size from single-function, small-scale sub-contractors to huge general contractors involved in numerous activities. This same diversity did, and will continue to complicate the application of an alternative structure, the large "industrial" unit. The evolving nature of work methods as the industry seeks to adapt to outside pressures is surely the root of such jurisdictional problems as those found in the drywall industry and also in the attempts to find a space for the "new" trades, either within the ranks of the old, or in separate units altogether.

The Alberta Board appears to have responded to the challenge in as many ways as the challenge itself has been put. The Board has remained flexible, particularly in questions regarding employers at the fringe, but it has not apparently drifted aimlessly. Fragmentation has not been encouraged through the immediate recognition of new trades, or smaller units, and steps have been taken wherever possible, it would seem, to head off jurisdictional difficulties and fragmentation by opting in favour of more comprehensive units.

More Common Problems

Supervisors and foremen. There were several issues handled by the Alberta Board that were not as clearly related to the nature of the construction industry as those problems discussed thus far. One of these was the status of supervisors and foremen.

The policy of the Alberta Board is to specify the status of foremen in relation to any proposed unit, as evidenced by the following comment which was made when an applicant failed to specify the status of foremen:

> Firstly, the description of the bargaining unit does not indicate whether foremen are to be included or excluded. Although persons in this classification may automatically be excluded from collective bargaining by reason of the provisions of section 55(g) (now 49(b)) of the Act it is the policy of the Board that a bargaining unit clearly defines those persons included or excluded.[136]

General foremen are invariably excluded from bargaining units. At Clarkson Electric[137] and Brown and Marshall Electric Ltd.,[138] the general foremen were dropped from the unit description as they were at Canadian Bechtel Ltd.[139] At C.F. Braun and Company Canada Ltd.,[140] the general foremen were also excluded, but not before the Board closely examined their functions. The following duties were sufficient to exclude them from collective bargaining, at least within the proposed unit:

1. Organizes and allocates carpenter foremen and their crews to work areas requested by the superintendent.

2. Is responsible for material usage and stock control as well as scrap utilization and future material requirements.

3. Schedules and plans carpenter work with the superintendent.

4. Prepares daily labour distribution and maintains cost control of carpenter work, reviews same with superintendent.

5. Ensures that all safety regulations are adhered to and is

familiar with all applicable safety codes and assists with education of such with the foremen and journeymen.

6. Has control over all power tools used by carpenters, ensures electrical facilities are available and tools are in good working order.

7. Co-ordinates manpower requirements with work schedule needs.

The status of the regular foremen is not as clear as that of the general foremen. "Working foremen" are usually included in the same unit as the tradesmen they supervise,[141] but there are several examples of instances where simple foremen have been left in the unit[142] and as many where they have been excluded from the unit.[143] The decision as to whether the foremen are to be included or excluded has not been pre-programmed. Much as in other sectors, the issue and final decision would appear to vary from one company to the next, depending on the actual managerial duties being performed.[144]

Security personnel. The question of whether or not to exclude from any given unit security personnel of various sorts also appeared in the construction industry, though the problem was by no means confined to that sector. In a case involving a proposed unit for a hospital, the British Columbia Board encountered the problem of placing the security personnel. The Board acknowledged that it did not have any real policy position on the matter, but that it was aware of the principles that could be applied in the development of such a policy:

> Any policy development will focus its attention on conflicts of interests between employees who have authority over fellow employees and their fellow employees. The nature of this authority will have to be examined, to determine whether the employees designated as guards are employed to monitor the actions of their

> fellow employees and perhaps to admonish or report employees for actions tainted with illegality. Where persons are employed principally to exercise this sort of surveillance over fellow employees, the Board may find it inappropriate to include them in the same unit as their fellow employees. Central to a policy development on the appropriateness of the unit for guards will be concern as to whether the guards and the employer are placed in a position where the guard's duties conflict with his interests as a member of the bargaining unit.[145]

In Alberta, a division has appeared, at least in the construction industry, in the term "guard"; there are now "watchmen" and "security guards" or "security personnel". At Humphrey's and Glasgow Canada Ltd.,[146] security guards were excluded from the unit of labourers, but at Mon-Max Services Ltd.,[147] watchmen were left in the unit and security guards were specifically excluded. At Apollo Construction,[148] watchmen were again included in the unit, but this time there was no accompanying exclusion of security personnel. This situation also occurred at Batoni-Bowlen Enterprises Ltd.[149] At Camwill Construction,[150] the watchmen were included in the unit, but security personnel were specifically excluded much like the situation at Mon-Max Services Ltd. At Supercrete (Alberta) Ltd.,[151] the watchmen were excluded upon the mutual consent of the parties, and at Dresser Industrial Products Ltd.,[152] security guards were excluded from the certified unit.

It can only be concluded that the functions performed by watchmen and security guards vary markedly from one company to the next. It would appear that such people are included or excluded depending upon their function rather than their title, such as in the case of foremen.

There is no discernable pattern in the cases involving foremen and security personnel. Each case is handled on its own merits and any other generalization regarding the status of either group would probably be more erroneous than correct. Foremen and security personnel are included or excluded, depending on the situation.

EMPLOYER ASSOCIATIONS

Multi-Employer Bargaining

The general debate. Employer associations are now, and have been for quite some time, a fact of life in the field of industrial relations, but, as is the case with other aspects of bargaining structure, their use has been the source of much debate. There are, as one might expect, costs and benefits associated with the concept of the employer association.[153]

The general argument in favour of employer associations is that they produce an acceptable level of stability. This stability is said to be the result of the collective influence of each of the following developments associated with the formation of an employer organization:

1. The formation of the employers' association forces out the marginal employer who is not interested in the long run future of the industry. This produces a much more stable environment for the firms that remain.

2. All employers face a uniform labour cost. The labour component is removed from competition giving the individual employer a higher degree of certainty regarding future labour costs.[154]

3. The power of the individual employer is greatly increased through the formation of an association. The power balance between employers and unions is generally equalized, making the collective

bargaining relationship more closely resemble that which it was intended to be: a relationship between near-equals at the least.

4. Issues that were not within the scope of collective bargaining previously can become very important when negotiations are carried on at a higher level because of the existence of the employers' association; pension plans for example. In order to formulate and administer such plans, the union and the association executives are almost forced to develop a closer working relationship. This relationship decreases the level of antagonism between the two groups, producing more stable and harmonious labour relations.

5. Economies of scale allow both parties to hire industrial relations professionals to handle at least part of the negotiation and administration of agreements. The rational "third party" approach taken by such people produces a much more predictable labour relations environment.[155]

6. In time an industrial relations jurisprudence develops that is specific and highly useful to those in the particular industry in which the association is active. The existence of such a body of knowledge reduces considerably the time and energy wasted on redundant agreement administration activity.

7. The greater number of employees involved, and the larger geographical area covered in some cases, makes it more difficult for other unions to "raid", thus reducing the likelihood of bargaining agent turnover and the instability that such an occurrance creates. Employers can put more reliance on a stable supply of properly-trained labour since a bargaining agent not constantly fighting for its "life" will be better able to devote more time and energy to providing just that.

Those opposed to the concept of the employers' association, counter the above arguments by listing the following as dangers inherent in the formation of such organizations:

1. Individual rights do not fare well in such a bargaining structure. The movement of authority in industrial relations matters from the individual in the small union local and the small businessman to those who represent the association and the large union means that allowances will not be made for small-scale problems and difficulties. The "little guy" at the bottom will simply be lost in the shuffle.[156]

2. The potential for monopolistic agreements between business and labour is greatly increased if employers choose to negotiate at the association level. The potential for price-fixing, production restriction, and the entry restriction is greatly increased once those who can control such factors begin to meet regularly.

It is alleged that the above two factors, coupled with the tremendously increased scope and cost of a strike under association bargaining, set the stage for increased government intervention in the collective bargaining process. The government is clearly committed to the defense of individual rights and the idea of free competition, as well as the amorphous "public interest" in cases of massive strike action. The threat that the appearance of employers' associations poses to each of these ultimately invites disastrous government intervention.

It is generally conceded that the use of employer organizations does produce a greater degree of stability. Whether the benefits of this stability offset the damage done to other concepts held in esteem in a democratic state is certainly debatable (the individual choice is clearly dependent on the individual value system). The positions enumerated above are the black and white sides of the debate. The truth, no doubt, lies somewhere in between and the search for it is quite beyond the scope of this discussion.

The construction industry adaptation - accreditation. The question of the formation of employers' organizations is invariably raised in industries that are characterized by a large number of small highly-competitive firms for whom wages are a large part of the total cost picture. Few examples would be better than the construction industry. In addition, the acknowledged increase in stability associated with association bargaining is also attractive to the construction industry. In fact, association bargaining is well-established in parts of the construction industry, though its success at producing the desired stability has not always been impressive, as was pointed out by H.W. Arthurs and J.H.G. Crispo:

> These associations have met with varying degrees of success within the present legislative framework in attempting to represent the interests of their members in labour negotiations. However, when faced with a union-management impasse, virtually all of them have experienced considerable difficulty in maintaining unity within their ranks. Dissension and defections have often weakened them at critical moments. In a sense, contractor organizations are now as vulnerable as unions were prior to the introduction of modern collective bargaining legislation. Their very existence depends on economic power rather than legal guarantees.[157]

Construction associations were powerless to maintain their membership solidarity in the "crunch" of a bargaining impasse. As a result, stability, through power equalization, which was the aim of the association scheme, was not achieved. The concept of accreditation of employers' organizations was put forward as a means of solving the problem. The scheme and its aims were well summarized by James Dorsey:

The third scheme, and the one advocated by Arthurs and Crispo

> is the one they called "realistic". Under this scheme an accredited association would be authorized to act as bargaining agent for all employers unionized at the time of, or subsequent to, accreditation. This form of multi-employer bargaining they thought would be effective in a highly unionized portion of the industry and advantageous to both employers and employees. They declined to enter upon a detailed discussion of what geographic and industrial sector boundaries ought to define the unit for accreditation, suggesting simply that it ought to be "appropriate". Any precise definition, they suggested, might inhibit "natural and creative" growth. They also pointed to, but declined to elaborate on, the possibility that the "realistic" scheme might require the accredited association to exercise disciplinary authority over non-members in order for the association to maintain control over collective bargaining.
>
> The main reason for accreditation, as put forth by Arthurs and Crispo, was to effect increased stability in construction industrial relations by equalizing the power of labour and management. This, however, was not the only reason it was advocated. Accredited contractor associations, they suggested, would also be in a position to insist on multi-trade bargaining. It is important to recognize that multi-trade bargaining has been part of the aim of accreditation from the start.[158]

The concept of employer accreditation is now, and was then, not without difficulties, both from a conceptual and practical point of view.[159] In striving for a balance of power through strengthening the position of the employer, the scheme's backers were assuming that there was such an imbalance and that the imbalance was permanent. The former was a justified assumption at that time, but the latter was, and is, rather dubious. James Dorsey commented on this assumption:

> The balance of power is not static. In an industry greatly influenced by seasonal and cyclical demand, it is not to be assumed that power at the bargaining table will remain constant over the years. The question of which party in construction labour relations, at any given time, can assert the greater power is very much dependent upon whether there is a high demand for construction or a high rate of unemployment in the industry. When the demand for construction is high and unemployment minimal the balance tips in favour of the unions. When unemployment is high and construction demand low the balance tips in favour of employers. Moreover, the balance of power varies depending not only upon the seasonal and cyclical fluctuations of the industry but from province to province, area to area, sector to sector and employer to employer.[160]

The concept of accreditation falters not only because of the fluctuating power balance that exists in the industry, but also because of the diversity among the employers themselves. The interests of a group of employees, if they are grouped according to accepted criteria, are usually quite similar, which helped considerably in the operation of the predecessor to accreditation: certification. It may not be possible to find such homogeneity of interests among employers. James Dorsey again comments:

> Most employers, on the other hand, will find under pressure not only that their interests are quite diverse but also that their own internal structures defeat the analogy to certification . . . . There is intense competition among construction industry employers and a corporate employer may be committed to that competition as a matter of corporate policy. Such an employer may find it impossible to sacrifice individual interests to the interests of the employer group. Directors are under a fiduciary duty to act in the best interests of their shareholders, and the interests of the shareholders in one corporation may differ greatly from those in another.[161]

The seriousness of this potential diversity of interests within the employer group is increased under the realization that the relative power of the members of the association will hardly be equal. Firm size varies tremendously within the industry with real economic power clearly linked to that size. There is not only a diversity of interests, but also the possibility that some of those holding one or another position may be able to force their will on the association members.

Even if it is assumed that the conceptual loopholes in the accreditation idea are not serious enough to preclude its use, there are still the practical problems facing the actual implementation of such a scheme. If the scheme is to be confined to the construction industry, it becomes necessary to decide just which firms are or are not "construction" firms. It is clear that, given observations made earlier in this chapter, this problem alone is formidable. In addition, it must be decided what are to be the membership requirements for admission to an accredited employers' organization and, after admission, what are to be the protections afforded the individual employer and the powers granted the association, both at negotiation time and during agreement administration. Finally, it must be decided just what is to be the appropriate unit for accreditation purposes.

All three jurisdictions considered in this study have, to some extent, provided legislative support to the concept of employer registration, though there are differences between the various schemes. Alberta's was one of the first and most comprehensive.

In Alberta, employers' associations are "registered" rather than "accredited" and the legislation (Section 82 to Section 93 of the Alberta Labour Act) is limited to the construction industry. An employers' organization "may apply to the Board to be registered as the agent for collective bargaining on behalf of all employers in a territory and trade jurisdiction in the construction industry in respect of whom a trade union has established the right of collective bargaining, where the employers' organization claims to have a majority of the employers as members."[162] Such an application may be made at any time except during collective bargaining or in the six months preceding the date on which the employers can require the union to commence collective bargaining.[163] Among other things, the Board must enquire into the trade jurisdiction,[164] and territory[165] for which the applicant seeks registration as well as whether the work involved is indeed part of the construction industry.[166] If the trade or jurisdiction are not appropriate, the Board has the authority to amend them[167] and the certificate issued to the registered organization must clearly state the trade and territory to which the document applies.

When the organization is registered by the Board it gains exclusive authority to bargain on behalf of all employers within the specified trade and territory with whom the named trade union has established collective bargaining rights[168] and also all employers with whom the union subsequently establishes such rights. Applications for the cancellation of the registration are only received if no notice to commence bargaining has been received by either party in the ten months following the registration date,[169] if no agreement has been concluded in the ten months since such a notice has been served,[170] or in the last two months prior to the end of the term of an existing agreement.[171] As long as the registration is in effect the employers affected by it are prohibited from engaging in any individual bargaining.[172]

The Ontario legislation, although based on the same principles as that of Alberta, does have a few notable differences. The Board must satisfy itself that not only do the majority of the employers who fall within the confines of the application belong to the association, but also that these employers employ the majority of the employees with whose representative the association will bargain.[173] The Board must also decide whether the members of the association have vested sufficient authority in the organization "to enable it to discharge the responsibilities of an accredited bargaining agent."[174] In Ontario, the accreditation of the organization may only be terminated if the association and the bargaining agent or agents do not conclude a collective agreement within one year of the accreditation date, or during the last two months of operation of an existing agreement.[175] Here too, however, the Board is directed to determine the appropriateness of the proposed unit, with the specified freedom to combine sectors and geographic areas "or parts thereof" if it is deemed necessary[176] and individual employers are also prohibited from entering into separate agreements, with such being null and void if entered into nonetheless.[177]

The British Columbia accreditation proceedings are not as comprehensive or industry-specific as those of Alberta or Ontario. The provisions apply to all parts of the provincial economy, not just construction. The Board is only given the power to "prescribe the nature of the evidence that the applicant shall furnish with, or in support of the application, and the manner in which the application shall be made,"[178] rather than the specific mandate to enquire into majority support and industry coverage found in Ontario and Alberta. The Board has the power to add to or delete from the list of employers included in the application[179] and, when the association is granted accreditation, it has the authority to bargain for its members "for such time as the employer is named in the accreditation."[180] During the fourth and fifth months following the execution of a collective agreement, any employer in the association may apply to the Board "to amend the accreditation by deleting his name therefrom."[181] H.D. Woods commented on the British Columbia form of accreditation:

> This is a much weaker form of accreditation than that of the other two provinces (Alberta and Ontario). There is no compulsory transfer of negotiation rights from the employers to the association. The individual employer must have agreed to the accreditation, and even if he does agree, he can, after four months of the terms of a collective agreement, apply to the board to amend the accreditation by deleting his name. In the British Columbia case the law does little more than spread a legal gloss over what

> the employers have individually agreed to. Such legislation is hardly likely to add much stability to the construction industry.[182]

The concept of accreditation or registration and the way in which it has been given legislative recognition, at least in Alberta and Ontario, is similar to certification. The employers' association becomes the exclusive bargaining agent for the employers with said employers only able to change the situation in specified ways at specified times. The agreement concluded by the bargaining agent is binding on the member employers and, more importantly, on future members. These future members may become part of the association not by choice, but merely by the fact of the unionization of their work force. Much as in the case with the certification of employee bargaining units, the economic future of individuals is involved. The freedoms and obligations under which an undertaking is operated are heavily influenced by the inclusion or exclusion of that enterprise in a construction employers' association.

It is again the labour relations boards who are left to deal with the difficult question of deciding just who will or will not be affected by the bargaining activity of the association or, in more familiar terms, defining the appropriate bargaining unit. It has already been pointed out by James Dorsey that the architects of the idea of accreditation declined to "dirty their fingers" by attacking the obviously "contentious" question of how the appropriate unit was to be determined. The authors chose only to acknowledge that there were several possible answers, and that they all involved some "readjustment":

> However, the possibility of conflict between union and employer bargaining units does highlight the need either to give priority to one or to readjust both to produce two congruent units. With

> regard to priority, (i) union bargaining units might govern; (ii) the smaller of the two units might govern; or (iii) the oldest in point of time might govern. Readjustment might involve the labour board in the highly contentious task of reconstruction bargaining units to accommodate conflicting labour and management interests, thereby overriding historical jurisdictional boundaries and ultimately affecting the balance of power.[183]

The potential for difficulty in defining the appropriate unit is indeed impressive. On the one hand are the employers, a group of semi-similar operations grouped together under the premise that they have enough in common, either because of geography, industry sector, or common labour pool, to warrant their placement under the umbrella of a single bargaining agent. It is the task of the labour board to decide whether there is indeed such a community of interest. On the other hand we have the union. There is no reason to expect, and even less likelihood that, the geographical and sectoral interests of the union will necessarily coincide with that of the employers' association. The avowed intent of the employer association to balance the power relationship, and eventually force multi-trade bargaining, ensures that in many cases the co-operation of the union may be less than enthusiastic. Again it is the labour board that must decide upon the appropriateness of the unit. What the board must in fact do is decide how it will "mesh" the two bargaining structures in a way that will indeed produce industrial relations stability. The Alberta Board of Industrial Relations did "dirty its fingers" in the muddy waters of employer association accreditation and the experience is worthy of attention.

The Activity of the Alberta Board

The case of the Alberta Roadbuilders Association registration[184] with respect to operating engineers is illustrative of the early difficulties faced by the Alberta Board. The association applied to be registered on behalf of a group of employers involved in heavy construction and roadbuilding activity, the nature of which made it "essential that the unit be the entire Province of Alberta by reason of the scattered locations in which work is carried out."[185] The association defined the two sectors it sought registration for as follows:

1. Heavy Construction: the construction and maintenance of irrigation projects, grading and or surfacing of air fields, hydro-electric and water diversion tunnels, building and industrial site preparation and excavation, minor bridges, dams, water and sewer lines, and the manufacture, production and delivery of rock, gravel and sand aggregates and read-mix concrete.

2. Road Building: the construction and maintenance of highways, roads, railroads, sidewalks, curbs, gutters and parking lots including clearing, grubbing, crushing, blasting, grading, paving, as well as bridges, bridge approaches and paving, culverts and tunnels which are part of such contracts.

All work done by member contractors in these two sectors, within the work jurisdiction of the operating engineers, was to be covered by the registration.

The association was registered for the applied-for area, trade and sectoral descriptions. Shortly thereafter, employers involved in the supply process appealed to the Board for exclusion from the registration provisions on the grounds that they, by nature of their operations, did not have a community of interest with those who made up the bulk of the association's membership.[186] In order to clarify the situation, and in recognition of the position of the suppliers, the Board excluded those employers "operating exclusively as suppliers." The association appealed the Board decision on the grounds that the supply process was an integral part of the roadbuilding and heavy construction process. The fact that there were a few peculiarities associated with employers in the area was not important because "the construction industry, by its very nature, is comprised of a variety of sectors, each of which possesses characteristics peculiar to itself."[187] Suppliers, like architects and engineers, were part of the construction process. The Board's response to the argument was to add the exclusively supplier exclusion to the roadbuilding portion of the sector description as well. Those firms that provided ready-made concrete products also claimed they did not belong in the association. At the insistence of the union another exclusion was added to exclude from both roadbuilding and heavy construction those employers "who stock and sell materials only." Questions also arose regarding the status of those who, either in the shop or in the field, repaired and maintained equipment. The Board agreed that such people were clearly an integral part of the construction process and the group was included in both parts of the description, although it had to be specified that the inclusion was applicable only to those "primarily" engaged in such activity.[188] Both the heavy construction and roadbuilding portions of the sector description now had the following addendum allowing for suppliers and field and shop repair:

> . . . stationary or field shops primarily carrying out equipment maintenance and repair; the manufacture, production and delivery of rock, gravel and sand aggregates and ready mix concrete, excluding those employers who stock and sell components and materials only.[189]

Similar troubles were also experienced regarding the registration of the Alberta General Contractors Association with respect to the Operating Engineers.[190] The original unit description read as follows:

> All operating engineers work undertaken by contractors carrying on the business of Commercial, Institutional, Heavy and/or Industrial building and construction in the Province of Alberta excluding railroad maintenance, highway construction and pipeline construction.[191]

The union did not approve of this description, claiming that it was not broad enough to cover the work done by some specialty groups:

> We feel that the description of the unit being applied for on this type of application must be broad enough to encompass not only the general application of commercial, institutional, heavy and/or industrial building and construction, but any work be it specialty type or otherwise that is done in connection with the foregoing. Pilings, dewatering systems, temporary heating, dredging, excavation, to name a few examples, are an integral part of most projects.
>
> A number of contractors do their own work such as pilings, dewatering, etc., yet there are also a number of specialty contractors in these fields that we feel should be bound by the unit description of an accreditation if one is granted to the Alberta General Contractors Association.[192]

The question of defining the sector was difficult enough when the applicant only sought to cover two fairly distinct portions of the industry. The Board was now faced with a group of "general" contractors who were involved in and thus sought a unit covering a broad spectrum of construction activity. As far as the union was concerned, the unit may have been broad enough, but it was not "deep" enough. The sub-contracting system used by such general contractors meant that the position of operating engineers employed by the general contractor during a period of collective bargaining impasse could be undermined by the continued operation of sub-contractors at the "bottom" of the job site organization. A choice had to be made between broadening the unit to include such lower level contractors and thus straining severely the community of interest within the employers' association or, alternatively, restricting the membership to only general contractors in spite of the potential friction with the union position. The Board granted the certification as applied for.[193]

Several attempts were also required before the Boilermakers' Contractors Association,[194] the Board, and the union could agree on a description that properly defined the trade jurisdiction, the Board holding out for a definition of trade jurisdiction that was not dependent upon "membership". The Alberta Roofing Contractors Association[195] sought a unit for registration of "roofing and related sheet metal industry," to which the Board responded that:

> The trade jurisdiction should describe the nature of the work to which registration will apply rather than on the basis of identifying the type of industry or employer to be affected by the registration certificate....The Board has expressed the opinion that the territorial jurisdiction of both parties affected by the application be similar to prevent any overlap with respect to the jurisdictions of other organizations and unions.[196]

Another union local appeared to have jurisdiction for similar work in a similar geographic area and the Board was faced with the question of "whether registration can issue affecting two separate local unions for a common territory and trade jurisdiction."[197] The application was ultimately rejected because of irregularities in the status of the applicant association and doubts about the applicant's claim of majority support.

The Piling Contractors Association of Alberta[198] also failed in its bid to obtain registration with respect to the Operating Engineers. The Board rejected the application for the following reason:

> The application negates the principle of collectivism which construction employers in general have deemed necessary. Further, it would result in a unit of employers which the Board does not find appropriate for collective bargaining for much the same reasoning

as set out in the 1969 Chemcell Case.

It was the opinion of the Board that the trade jurisdiction was narrow in scope and the group of construction employers as applied for was not logical because of fragmentation.[199]

In the case of the Electrical Contractors Association,[200] the issue was whether the traditional specific inclusion of foremen and subforemen should be continued given that journeymen and apprentices were already mentioned in the unit description. The union felt that such inclusions should be included since they always had been. The association disagreed pointing out that ". . . the unit contemplated in the registration application is a description of work performed by contractors, rather than a description of job titles of workmen employed by contractors."[201] The Board altered the unit to exclude all mention of specific job titles or classifications.[202] With regard to the Canadian Plumbing and Mechanical Contractors Association,[203] the issue was centered upon the difficulties caused by the considerable sectoral overlap of the plumbers' work jurisdiction. The original application merely specified that the unit was to encompass "all plumbing, mechanical and pipefitting contractors". Closer examination revealed that, phrased in that way, the description would include fabricating shops and pipeline construction.[204] Employers in such activities, if included in the association, would again place serious strains on the cohesiveness of the association. This likelihood was acknowledged by the Board in excluding such activity from the association unit.

The issue of the relationship between the geographical area of a proposed registration and the geographical jurisdiction of the relevant trade union, and the validity of the association jurisdiction itself, was heatedly debated in two cases involving employer associations in southern Alberta. The Southern Alberta Sheet Metal and

Roofing Contractors Association[205] sought, in its application, to have the same trade and geographical jurisdiction as had been used in its negotiations with local #558 of the Sheet Metal Workers. (This local and two others had been merged into the new local #8 of the same union.) The association defended its position, that it should be allowed to continue using the old geographical jurisdictions, in several ways:

1. A harmonious relationship had existed in the area for twenty years and the employers wanted to know if it was still Board policy to "maintain an atmosphere in which employers and employees can continuously review and build a satisfactory working relationship and practically resolve their wage and fringe benefits needs and requirements."[206] The employers urged that "this successful relationship, which had been built up over the years through the mutual trust and understanding of people who knew each other well and had learned how to meet each others needs should not be disturbed by forcing this area to negotiate in a larger territory where their long tradition of trust and mutual understanding would be lost."[207]

2. The market orientation in the area in question was predominantly rural and local, giving the area a set of unique problems that could not be handled through a larger unit, indeed "the government of Alberta itself is no longer thinking in terms of arbitrary lines drawn on a map but more in terms of Industrial Corridors. Regional development is also being applied to hospitals and other health care institutions based on socio-economic regions and so on."[208] The employers went on to argue that "a great opportunity exists for employers and employees to work together in achieving common goals where their contract negotiations can be carried out on a regional

basis and where those regions are carefully structured so as to create logical socio-economic blocks."[209]

Similar arguments were voiced by the Medicine Hat Sheet Metal Contractors Association[210] which also sought to hang on to long-standing geographical arrangements. In its submission to the Board, the association made the following observations:

1. No dispute had ever occurred between the Sheet Metal Workers and the employers in Medicine Hat under the existing arrangements.

2. The economic reliance of the community on rural and retirement incomes made it such that "the contractors are not in a position to pass on the high costs of increased benefits to employees which are demanded and passed on in the urban centres."[211]

3. In light of the slower economic pace of the area, "the union and its employees have recognized a substantial differential between the costs of living for employees in the Medicine Hat area and those which might have to live in centres of the size of Calgary and Edmonton."[212] Both sides had bargained accordingly.

4. If a unit covering all of southern Alberta were endorsed "the contractors in Calgary (would) constitute a majority and these interests would be the ones catered to. . . .The special interests and voice of the Medicine Hat area would not even reach the discussion floor."[213]

The Board dealt with this matter of "readjustment" by refusing the requests of both associations. Similar reasons for decision were issued in each case, those issued in the Medicine Hat case reading as follows:

In the some 16 registration certificates issued to date by this

> Board, the Board has registered an employers' organization for the territorial jurisdiction of the respective trade union.
>
> In doing so the Board has sought to implement the purpose of registration by stabilizing collective bargaining in the construction industry by registering an employers' organization for the territorial jurisdiction of a trade union.
>
> To register an employers' organization or employers' organizations for a portion or portions of the territorial jurisdiction of a trade union would, in the opinion of the Board, defeat the very purpose of registration by fractionalizing negotiations and other matters carried on under the Alberta Labour Act between and possibly against each of the employers' organizations so registered for the territorial jurisdiction of one trade union.
>
> Moreover, to register any portion of a trade union's territorial jurisdiction could, in the opinion of the Board, invite the "whip-saw" technique in collective bargaining whereby one trade union could effectively play a registered employers organization off against another, thus creating instability within the construction industry. In the opinion of the Board, one of the purposes which the registration legislation was implemented to achieve was to minimize this very technique.[214]

The importance of stability clearly outweighed the interests of a localized group in maintaining a traditionally separate identity. The Board no doubt felt that accommodations could be made within the larger entity for the unusual circumstances extant in each location.

The most ambitious attempt to deal with the problem of delineating manageable sectors within the construction industry for the purposes of employer organization registration is found in the cases involving the Alberta Construction Labour Relations Association. The Association, in seeking to represent a large number of employers in many facets of the industry, was literally forced to come up with some grouping of employers that would tread the thin line between excessive fragmentation and lack of a community of interest. Although the concept of a trade division had a rocky beginning,[215] the following categories were eventually found to be a workable compromise, at least from the Association's point of view:

Accoustical Trade Group

Bricklayers Trade Group
Carpenters Trade Group
Cement Masons Trade Group
Drywall Taping
Insulators Trade Division
Ironworkers--Reinforcing
Ironworkers--Structural
Labourers (Calgary)
Labourers (Edmonton)
Labourers (Lethbridge)
Lathers (Calgary)
Lathers (Edmonton)
Lathers (Lethbridge)
Mechanical (Calgary)
Mechanical (Edmonton)
Mechanical (Lethbridge)
Millwrights (Calgary)
Millwrights (Edmonton)
Operating Engineers (Crane) Trade Group
Painters (Calgary and Edmonton)
Plasterers (Calgary)
Plasterers (Edmonton)
Roofers (Calgary)
Roofers (Edmonton)
Sheet Metal (Calgary).[216]

The Board has "recognized and approved" the concept of a trade division,[217] as is evidenced by the following comment:

> The community of interest of members making up a trade division

> under a registration certificate establishes a viable labour-management relationship with the respective trade union, as opposed to a relationship involving the total Alberta Construction Labour Relations Association membership of which many members may not be engaged within the territory or trade jurisdiction affected by a registration certificate.
>
> The Board has recognized and approved the principle of the trade division concept . . . .[218]

Although it recognizes the concept, the Board does not necessarily recognize all the actual trade divisions. An attempt to create a registration for a "drywall taping" trade division was rejected for the reason that:

> Work carried out in the trade jurisdiction applied for was also performed by other trades and further, the application was attempting to carve out a sub-trade jurisdiction from an established trade jurisdiction of a trade union which would further fragment collective bargaining in the construction industry.[219]

Several policy trends are discernable in the registration activities of the Board to this point. The Board prefers a unit description that refers to the work to be covered rather than to job titles, the sector of the industry, or the membership of a particular trade union. The scope of previous collective bargaining is considered important. The relative similarity in the geographical jurisdictions of the union and the association are clearly of extreme importance, (the geographical jurisdiction of the union being predominant) as is the similarity of the employers who are to make up a proposed unit. Small geographic areas and narrow work jurisdictions are clearly not generally acceptable to the Board.[220] Repeated references to "stability" indicate that above all else the Board is interested in using the registration tool to foster greater stability in the construction industry.[221] There is evidence that the Board frowns upon attempts to fragment any further the trade structure of bargaining, but as yet, there is nothing to suggest that the Board or the other parties have made any serious commitment to fostering multi-trade bargaining which, at least in theory, was a major goal of the registration process. The evidence suggests that all concerned have been kept sufficiently active to date in trying to adapt the new legislation to existing structures, rather than in attempting to create new ones.

At the beginning of this chapter the writer stated that the certification activity of the Alberta Board could be discerned as being divided into two spheres within the construction industry, activity related to problems and challenges that appeared because of the existing structure of the industry and the environment surrounding that structure, and activity related to difficulties directly related to the implementation of new legislation regarding the formation of employer organizations.

The Board's certification activity was such that it is difficult and perhaps even foolhardy to make any sweeping generalizations. The craft structure remains intact and it is supported by the Board, but the challenges to that structure in situations that raised doubts about its applicability were not met with any rigid Board policy. In most areas of conflict examined examples of various types of units could be found, reflecting the unique aspects of each case. It does appear, though, that there is a weak but discernible trend toward consolidation in Alberta construction units. The Board's clear rejection of most suggestions that would result in fragmentation, and its tendancy toward larger units where the construction environmental influences are not strong indicate to this writer that the Board is willing to, if nothing else, out-wait those who would seek to promote fragmentation while quietly whittling away at the structure where the opportunity presents itself. The policy is clearly more favourable than one that would directly challenge such a long-standing structure.

Board policy with regard to employer organization registration is much clearer. The legislation was designed to promote stability in construction labour relations and the Board has consistently pursued that goal. If stability does result from the present policy, the writer suspects that the legislation will also prove a useful tool in promoting larger, more comprehensive, multi-craft units, something it has not done to date. The ultimate role played by the Board and its new legislative tool is undoubtedly up to the parties themselves.

FOOTNOTES

The Construction Industry

[1] The absolute number of cases that involved the construction industry was approximately equal to the total for the hospital industry: about 20% of the total.

[2] H.D. Woods, Labour Policy in Canada (Toronto: MacMillan of Canada, 1973), p. 249, Labour Policy and Labour Economics in Canada, Vol. I.

[3] H. Carl Goldenberg and John H.G. Crispo, eds., Construction Labour Relations (n.p. Canadian Construction Association, 1968), p. 7. This section on the nature of the construction industry will draw heavily from this study which Woods described as the "most ambitious and successful study of labour relations in any Canadian industry to date" (Labour Policy in Canada, p. 250).

[4] Goldenberg and Crispo, Construction Labour Relations, p. 6.

[5] Goldenberg and Crispo point out that technology is steadily whittling away at the seasonal fluctuations in the construction industry, but also that it is still a major determinant of the overall nature of the industry. This combination of vacilating demand and seasonality also means that bargaining power is not a constant within the industry. A union bargaining in the fall of a slow year hardly has the power of one bargaining in the spring of what promises to be a very good year (ibid.).

[6] Ibid., p. 9. Mills pointed out that the specialization engaged in by construction firms is done not only in terms of type of work undertaken, but also in terms of functions performed in relation to a specific job.

"In some specialties the firm is largely a labour-only contractor, with receipts to the firm including very little other than its wage-bill. In others the firm provides materials as well as labour, and in still others payments for the use of machinery constitute an important element of total billings. For example, in 1967 value added as a percent of total receipts averaged more than 90 percent for wrecking contractors but only 48 percent for plumbing, heating, and air-conditioning contractors (because of the importance of materials purchases by the contractors for installation) and 29 percent for general contractors (because of materials installed and subcontracting). Receipts from sale of materials (or fixtures) are of great importance to the plumbing firm, leading both contractors and labor to try to protect the contractor's role as a supplier to the general contractor or owner. In wrecking work there is no such concern. The general contractor, in contrast to both of the foregoing, is in many respects a financial manager for a job, subcontracting most of it. General contractors are understandably concerned to retain their position as overall manager of the job by controlling the flow of project funds to subcontractors" (Daniel Quinn Mills, Industrial Relations and Manpower in Construction n.p. : Massachusetts Institute of Technology, 1972 , p. 7).

[7] John T. Dunlop, The Industrial Relations System in Construction, cited by Arnold R. Weber, ed., The Structure of Collective Bargaining (New York: The Free Press of Glencoe, 1961), p. 258.

[8] Warren K. Winkler, "A Study of Labour Relations Law in the Construction Industry in Ontario" (unpublished PhD dissertation, Osgoode Hall Law School, 1964), cited by Goldenberg and Crispo, Construction Labour Relations, p. 15.

[9] Woods saw the construction industry employment relationship as being so unique that it was possibly misleading to even use the term "employees":

"We refer to construction workers as employees, and in a technical and legal sense they are. But the relationship between these workers and their employers and managers is so different from that found in more stable industrial situations that the use of the term 'employee' to describe both can be misleading. Because of the very nature of the construction industry, the relationships between employer and employed more closely resembles the simplistic description conveyed by the expression 'labour market' than in perhaps any other employer-employee relationship" (Woods, Labour Policy in Canada, p. 252).

[10] "The union, as the only permanent institution to which the employee can attach himself, must assume a much more vital role in the designing and maintenance of the personnel policy than is the case in other industries . . . It would be an exaggeration to suggest that the roles of employer and union have become reversed in the construction industry so far as personnel policy and administration are concerned, yet someting like that actually happens" (Ibid., p. 253).

[11] Winkler, Study of Labour Law in Construction in Ontario, cited in Goldenberg and Crispo, Construction Labour Relations, p. 21.

Section 106(e) of the Labour Relations Act of Ontario recognizes the sectoral structure of the industry by naming specific sectors:

"'Sector' means a division of the construction industry as determined by work characteristics and includes the industrial, commercial and institutional sector, the residential sector, the sewers and water mains sector, the road sector, the heavy engineering sector, the pipeline sector and electrical power systems sector."

[12] Mills saw the peculiarities of the housing sector, for example, as so great that he devoted a separate chapter to this sector alone and no doubt arguments could be made that several other sectors are at least as unique as housing.

[13] Dunlop identifies five different possibilities for the geographical scope, each pertaining to a differing number of branches within the industry:
a. Nation-wide agreement covering all branches of the industry;
b. Nation-wide for particular sectors within the industry;
c. Area- or locality-wide for all branches;
d. Area- or locality-wide for particular sectors; and
e. Single-project, all branches or single crafts
(Dunlop, I.R. System in Construction, cited by Weber, Structure of Collective Bargaining, pp. 263-270).

[14] Goldenberg and Crispo, Construction Labour Relations, p. 22. In their introduction to this work, these authors point out that each contributor had to "stretch his capacity to generalize to the utmost" in order for anything of "practical value" to be realized from the work. It was accepted as fact that for each broad assertion made a multitude of exceptions could have been found.

[15] Ibid., p. 653.

[16] Ibid., p. 655.

[17] Woods, Labour Policy in Canada, p. 285.

[18] Goldenberg and Crispo, Construction Labour Relations, p. 657.

[19] Ibid., p. 655.

[20] Mills accepts the usefulness of craft "administration," but the lack of any reference to the strong bargaining position, and hence ability to defend work jurisdiction, raises doubts about his willingness to expand the term "administration" to include such activities:

"Craft institutions are a method of administering work . . . Craft administration of production is an alternative to what may be called the bureaucratic method of administration, which depends upon detailed supervision and unchanging procedures. Craft administration performs the same functions as bureaucratic administration, but in construction, craft administration is the more rational alternative in view of the industry's economic and technical characteristics" (Mills, I.R. and Manpower in Construction, p. 183.)

[21] Mills noted the existence of more general "restrictive work practises" in the housing industry, though no conclusions could be drawn regarding their overall effect:

"Restrictive practises frequently have been cited as affecting productivity in home building. The list of these practises is a conglomerate one; it includes restrictions on the use of machines and hand tools, on the use of tools by foremen, and on the activities of shop stewards; regulations concerning the employment of apprentices, jurisdictional requirements, the pacing of work, subcontracting, the honoring of picket lines, wild cat strikes, and hazard pay; provisions for cleanup, coffee breaks, and lunch breaks; requirements concerning crew size, call-in time, wage scales and overtime, hiring arrangements, standby workers, and the storage of tools and clothing; and provisions affecting layoffs and promotion, travel time and maintenance allowances, and job classifications and premium pay. This list ranges from the provisions of work and work practises--normally the subject of collective bargaining--to informal practises and illegal work stoppages. There is little systematic and comprehensive information on these subjects and on their actual effects on productivity. There have been few, if any, objective surveys of the actual extent of such practises and their cost effects throughout the country and by locality" (Ibid., p. 258).

[22] Peter Stevens saw the short run approach as the major problem facing post-World War II construction industrial relations:

"To my mind, this (the major problem) has undoubtedly been the snowballing effect of resorting to short-term expediency" ("Labour Relations Policy and the Building Trades in Canada," Labour Law Journal, August, 1963 , 727).

[23] The best example is the promotion, through public policy, of employers' associations. The issues surrounding these institutions will be fully discussed later in this chapter.

[24] Section 106(c), The Labour Relations Act, RSO, c. 232, 1975.

[25] Section 106(b).

[26] Section 106(f).

[27] See "Employers' Organizations" for a discussion of the legislation pertaining to employers' organizations in the three provinces.

[28] Section 1(1). Labour Code of British Columbia, SBC, c. 122, 1973, section 48 gives the Board the specific power to include such people in existing certifications. The definitions are similar in the two acts. Below is that used in the Ontario statute:

"'Dependent contractor' means a person, whether or not employed under a contract of employment, and whether or not furnishing his own tools, vehicles, equipment, machinery, material or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he is in a position of economic dependence upon, and under an obligation to perform duties for that person more closely resembling the relationship of an employee than that of an independent contractor."

[29] Section 57.

[30] Section 124.

[31] Section 41(1).

[32] Section 59.

[33] Division 6--Sections 82 to 93, The Alberta Labour Act, RSA,

c. 33, 1973.

[34] Division 14--Sections 160 to 162.

[35] Division 7.1, Sections 93.1 to 93.6 of the Alberta Labour Act does provide a set of rules designed to provide the utmost in stability in the construction of oil sands plants in Alberta, and thus this section could be construed as being a recognition of the special problems of construction as they relate to large-scale projects. The division essentially provides a series of clauses that allow for the centralization of labour relations functions and a consequent increase in stability.

[36] At first glance the most logical division would appear to be on sectoral lines, the natural divisions within the industry, but closer scrutiny reveled that the problem of placing the companies involved in the many cases in any particular sector was insurmountable without an intimate knowledge of the operations of each entity.

[37] Caproco Corrosion Prevention Ltd. v Caproco Employees Association [1967], ABIR, LR-596.

[38] If the work force in the shop were much larger than that in the field the firm may be better classified as a manufacturing operation than as a construction firm.

[39] Alem Construction Ltd. v Boilermakers #146 [1968], ABIR, LR-1809-A-3.

[40] Rocket Welding Contractors v Boilermakers #392 [1972], ABIR, LR-2500-R-2.

[41] National Tank Ltd. v Boilermakers #146 [1971], ABIR, LR-1809-N-2.

[42] Ibid., from the submission of A.O. Ackroyd and Company to the Board.

[43] Ibid., from the submission of R.T.G. McBain to the Board.

[44] Alberta Tank Ltd. v Boilermakers #392 [1971], ABIR, LR-2500-A-2.

[45] Murdock Production Equip. Ltd. v Murdock Production Equipment Employees Association [1973], ABIR, LR-132.

[46] Dresser Industrial Products v Iron Workers #805 [1975], ABIR, LR-2244-D-1.

[47] Canadian Equipment Sales and Service v Iron Workers #720 [1969], ABIR, LR1610-C-9. Other units that specify that field workers are to be excluded, or are made up of field workers only, may be found in the cases of Collins Steel Products (Collins Steel Products Ltd. v

Collins Steel Products Employees Association [1969], ABIR, LR-303); Bonnybrook Steel Ltd. (Bonnybrook Steel Ltd. v Iron Workers #725 [1970], ABIR, LR-442); Edmonton Iron and Wire Works (Edmonton Iron and Wire Works v Iron Workers #776 [1971], ABIR, LR-359-E-1); and Dominion Bronze and Iron Ltd. (Dominion Bronze and Iron Ltd. v Painters #1900 [1971], ABIR, LR-1013-D-6).

[48] Camwill Construction Ltd. v Iron Workers #720 [1972], ABIR, LR-1610-C-16.

[49] J.K. Campbell and Associates Ltd. v Iron Workers #720 [1972], ABIR, LR-1610-C-23.

[50] Atco Structures Ltd. v Iron Workers #725 [1974], ABIR, LR-808-A-8. In this particular case, the company claimed that it was putting up a "specialized building which is only the second of its kind ever put up in southern Alberta" and, thus, the likelihood of similar workers being used on a more permanent basis could not be determined. The Board apparently felt the likelihood was sufficient to warrant the unit certification.

[51] Universal Industries Ltd. v Boilermakers #146 [1969], ABIR, LR-1809-U-1.

[52] Weldomatic (1965) Ltd. v Boilermakers #146 [1971], ABIR, LR-1809-W-11.

[53] Sargent Construction Ltd. v Iron Workers #725 [1971], ABIR, LR-808-S-5.

[54] Supercrete (Alberta) Ltd. v Carpenters #1325 [1973], ABIR, LR-154-S-23.

[55] Con-Force Products Ltd. v Carpenters #1325 [1969], ABIR, LR-892-C-16.

[56] Con-Force Ltd. v Carpenters #1325 [1970], ABIR, LR-892-C-16. At Consolidated Concrete Ltd. the unit of operators, labourers, and other personnel granted to the applicant was allowed to span two plants because of the frequent interchange of personnel and the centralized administrative apparatus of the employer (Consolidated Concrete v Teamsters #362 [1974], ABIR, LR-1412-C-3).

[57] Brown & Root Construction Ltd. v Teamsters #362 [1969], ABIR, LR-1412-B-2.

[58] Ibid., letter to the Board from "the management" of Brown & Root Construction Ltd.

[59] Ralph M. Parsons Construction Ltd. v Teamsters #362 [1971], ABIR, LR-1412-P-1.

[60] Alberta Concrete Products Ltd. v Teamsters #362, ABIR, LR-1412-A-1.

[61] Letter from A.O. Ackroyd to R.B. d'Esterre , 21 August 1973.

[62] Jeffrey Sack and Martin Levinson, Ontario Labour Relations Board Practise (Toronto: Butterworths, 1973), p. 290.

[63] Section 106(b), The Labour Relations Act. Part of the problem previous to 1970 was that some unions could only admit employees in the construction industry and it was by no means clear, to many individuals, that shop employees were part of the industry.

[64] Where the Board apparently feels there is any doubt about the application of the unit, the phrase "at or from" may be added, (Red-D-Mix Concrete v General Teamsters Local #141, June [1972], OLRB Reports), or, as in the case of many units involving the Operating Engineers, it is specified that the unit is to include those performing related functions such as maintenance and repair (Dou-Ray Excavating and Sewer Ltd. v Operating Engineers #793 [1972], OLRBR).

[65] Combustion Engineering-Superheater Ltd. v Iron Workers #97 [1966], BCDOLSOA; Dominion Bridge Company v Iron Workers #97 [1966], BCDOLSOA; Canadian Pittsburgh Industries Ltd. v Glaziers and Glassworkers Union #1527 [1966], BCDOLSOA; and North Surrey Steel Contractors Ltd. v Iron Workers #97 [1969], BCDOLSOA.

[66] Dominion Construction Co. Ltd. v Iron Workers #712 [1966], BCDOLSOA; Kay-Son Steel Fabricators and Erectors Ltd. v Steelworkers #3546 [1967], BCDOLSOA.

[67] Continental Cabinet and Furniture Ltd. v Carpenters #2527 [1966], BCDOLSOA.

[68] McKinley and Taylor Ltd. v Sheet Metal Workers #271 [1968], ABIR, LR-963-M-2.

[69] Ralph Eerkes Painting and Decorating v Edmonton Construction Workers Association #93 [1970], ABIR, LR-1940-E-2.

[70] Sparrow Electric Ltd. v Sparrow Electric Employees Association [1971], ABIR, LR-1353.

[71] F & S Painting Ltd. v Edmonton Construction Workers Association #83 [1976], ABIR, LR-2481-F-1. All-inclusive unit was also certified at B.R. Steel Fabricators Ltd. (B.R. Steel Fabricators Ltd. v Steel Workers #6673 [1974], ABIR, LR-2074-B-2).

[72] John Guzowski Plastering v Carpenters #846 [1970], ABIR, LR-443-G-2.

[73] Twin Bridges Sand and Gravel (1960) Limited v Operating Engineers #955 [1970], ABIR, LR-955-T-5.

[74] Chimo Structures Ltd. v Plumbers and Pipefitters #170 and Carpenters #1928 [1976], CLRBR.

[75] Ibid., pp. 379-380.

[76] Peniche Construction Forming v Labourers #183 [1974], CLRBR.

[77] Canwall Contractors Ltd. v Painters and Allied Trades #1891, and Marble Masons, Tilelayers, Terrazzo Workers #31, [1975], OLRBR.

[78] Ibid., p. 533.

[79] C.F. Braun and Co. of Canada Ltd. v Teamsters #362 [1974], ABIR, LR-1412-B-10.

[80] Ibid., letter from Mr. G.A. Lucas to Mr. W. Canning, 25 July 1974.

[81] This unit has since been recognized by the Board. In the case of the Canadian Kellogg Company Ltd. the Board certified a unit of non-manual support personnel with the following comment:

"The Board considered that the term used in the instant application 'non-manual support personnel' was an identifiable unit when the applicant in the description, excluded 'those employees encompassed by traditional craft and bargaining units.' The Board is also of the opinion that the applicant has included all persons who would share a common community of interest and does not agree that this proposed unit would fractionalize those of common interest. In the Braun case mentioned above the Board refused to certify the applicant because they specifically excluded from the unit employees who would have a common community of interest with non-manual support personnel. Such is not the case in the instant application" (The Canadian Kellogg Company Ltd. v Teamsters #362 [1975], ABIR, LR-1412-C-20, letter from W. Canning to L. Martin, 15 January 1976).

[82] The peculiar position occupied by such personnel is illustrated by this comment by the Alberta Board regarding the decision made in the C.F. Braun case:

"The Board considered that the term 'non-manual support personnel' as described in this application for certification designates a group of employees of the respondent employer engaged as support staff not encompassed by the traditional craft and industrial bargaining units certified in the construction industry for the purpose of collective bargaining."

[83] Units that ignored, in whole or in part, traditional craft lines may be found in the additional cases of Aiton Pipework et al (Aiton Pipework and Process Ltd. et al v Plumbers and Pipefitters #488 [1972], ABIR, LR-174-A-4) and Kai Nai Industries Ltd. (Kai Nai Industries Ltd. v Carpenters [1974], ABIR, LR-1977-K-1) but these cases are not indicative of any heavily supported general policy it appears, since at Blanchett Neon Ltd. the Board saw fit to certify a unit of painters only in a sign manufacturing and installation operation (Blanchett Neon Ltd. v Painters #1016, ABIR, LR-1940-B-9.)

[84] "In short, the construction industry in Canada has problems in

labour-management relations; a good many of these problems may be here to stay for some time; the most mature response of the parties of interest may be to learn to live and cope with the problems . . . " (A.W.R. Carrothers, "Labour Relations Act," cited by Goldenberg and Crispo, Construction Labour Relations, p. 324).

[85] Herman, Appropriate Bargaining Unit, p. 93.

Sack and Levinson point out that the Ontario Board, when faced with a jurisdiction question, examines the following:

a. jurisdictions of the competing unions as set out in their constitutions and collective agreements;

b. written or informal agreements between the unions regarding work jurisdiction;

c. rulings and awards of authorized tribunals or individuals in other jurisdictions;

d. past practise of assigning the work in Ontario;

e. the nature of the work in question;

f. the skill involved; and

g. the implications of any decision with regard to efficiency, safety and economy.

[86] Ralph M. Parsons Ltd. v Iron Workers #725 [1961], ABIR, LR-808-P-3.

[87] Ralph M. Parsons Ltd. v Carpenters #1460 [1971], ABIR, LR1016-P-9.

[88] Marshall Lee Construction v Bricklayers and Terrazzo Workers #1 [1971], ABIR, LR-2289-M-4.

[89] Alsask Steel Ltd. v Iron Workers #725 [1970], ABIR, LR-808-A-5.

[90] Prarie Climbing Cranes Ltd. v Iron Workers #725 [1970], ABIR, LR-808-P-4.

[91] Ibid., letter to Mr. G. Gough from Mr. J.F. Zimmerman, 3 November 1970.

[92] J.K. Campbell & Associates v Iron Workers #720 [1971], ABIR, LR-1610-C-23.

[93] Ibid., letter from D.J. Ross to J. Elsinga, 15 December 1971.

[94] Ibid., letter from D.J. Ross to G. Gough, 22 December 1971.

[95] Rocket Welding Contractors v Boilermakers #392 [1972], ABIR, LR-2500-R-2.

[96] Ibid., letter from W.K. Pattison to J. Elsinga.

[97] Tar Sands Machine and Welding Company Ltd. v Boilermakers #146 [1974], ABIR, LR-1809-T-6.

[98] The Board does appear willing to support attempts to acknowledge the overlap and redundancy in work jurisdictions through combined units. At Aiton Pipework, for example, a unit that combined plumbers, steam fitters, welders, and pipe fitters was certified (Aiton Pipework et al v Plumbers & Pipefitters #488 [1972], ABIR, LR-174-A-4).

[99] There appeared to be at least four unions claiming jurisdiction over parts of the work in the drywall industry; the Carpenters and Joiners, the Lathers, the Painters, and the Plasterers.

[100] Alpine Drywall and Plastering v Carpenters #846 [1970], ABIR, LR-443-A-3.

[101] The painters were granted a similar unit at Modern Lathing Ltd. after considerable controversy with the Wood, Wire and Metal Lathers and Carpenters and Joiners over the status of certain types of work. The Board appeared, in this case, to remain largely outside the conflict by altering the unit to job titles rather than work descriptions (Modern Lathing Ltd. v Painters #583, et al [1970], ABIR, LR-481-M-5).

[102] George R. Byer & Associates v Wood, Wire and Metal Lathers #205 [1971], ABIR, LR-1048-B-6.

[103] Ibid., letter to Mr. J. Elsinga from Mr. G. Byer, 8 April 1971.

[104] Abalon Contracting Ltd. v Wood, Wire and Metal Lathers #221 [1975], ABIR, LR-1144-A-3.

[105] Ibid., letter to Mr. W. Canning from Mr. A. Axelson 14 February 1975.

[106] Alco Drywall (Edm) Ltd. v Carpenters #1325 [1972], ABIR, LR-154-A-12.

At Abalon Contracting Ltd., the Board recognized an "interior systems" unit made up of Accoustical Applicators, Carpenters, Floor Layers, Steel Stud and Drywall Applicators despite the protests of the Lathers (Abalon Contracting Ltd. v Carpenters #1325 [1976], ABIR, LR-808-K-5.)

Attempts at creating larger units in this sector were not always as successful as those at Alco Drywall or Abalon Contracting. At Dominion Construction two locals of the Painters and Allied Trades attempted to have their unit descriptions merged into one that read: "all employees engaged in protective and/or decorative coating and/or sheeting work and all preparatory work thereto . . . painters, paperhangers (and other sheeting workers) decorators, sandblasters, building cleaners, wood finishers and registered apprentices." The employer vigorously opposed the proposed description, pointing out that "protective coating" could conflict with "stucco and plaster finishes traditionally applied by other trades, "sheeting work" could be construed to include things like gyproc, metal, plywood and formica, the application of which was claimed by other unions, "building cleaners" could mean all forms of interior and cleaning, and "wood finishers" clearly infringed upon the jurisdictional territory of the Carpenters and Joiners. The employer lamented that such a broad unit description could cause disputes between at least six unions active in the industry. The Board rejected the unit as inappropriate.

[107] The position of the Ontario Board regarding the often unclear distinctions between work jurisdictions in the construction industry was succinctly summarized in the Peniche Construction case:
". . . such ambiguity in the jurisdiction between locals of the same trade union is not in the best interests of harmonious labour relations" (Peniche Construction Framing v Labourers #183 [1974], OLRBR, 228).

[108] Prestige Builders Ltd. v Labourers #1111 [1971], ABIR, LR-1013-P-9.

[109] Ralph M. Parsons Construction Company of Canada Ltd. v Operating Engineers #955 [1970], ABIR, LR-955-P-9. In the case of Stearns-Roger Canada Ltd., the British Columbia Board rejected a proposal for a province-wide unit of survey "instrument men and level men" (Stearns-Roger Canada Ltd. v Operating Engineers #115 [1971], BCDOLSOA).

[110] Honeywell Controls Ltd. v Plumbers and Pipefitters #488 [1972], ABIR, LR-174-H-8.

[111] Scaffold Solutions (Alberta) Ltd. v Carpenters #1325 [1976], ABIR, LR-154-S-26.

[112] Zimmcor Company v Iron Workers #725 [1973], ABIR, LR808-Z-1.

[113] H. Kenda Agencies Ltd. v Iron Workers #725 [1974], ABIR, LR-808-K-5.

[114] Burnco Industries Ltd. v Teamsters #362 [1971], ABIR, LR-1412-B-8.

[115] Pioneer Paving Ltd. v Teamsters #362 [1972], ABIR, LR-1412-P-5.

[116] Midvalley Construction Ltd. v Teamsters #362 [1974], ABIR, LR-1412-M-5.

[117] Superior Masonry Products Ltd. v Teamsters #362 [1971], ABIR, LR-1412-S-5. Truck drivers were also separated from other personnel at Alberta Concrete Products Ltd. (Alberta Concrete Products Co. Ltd. v Teamsters #362 [1973], ABIR, LR-1412-A-1).

[118] Revelstoke Companies Ltd. v Teamsters #362 [1973], ABIR, LR-1412-R-16.

[119] Arctic Transit Mix v Teamsters #362 [1973], ABIR, LR-1412-A-6. Similar units were also endorsed at Revelstoke Transit Mix

(Revelstoke Transit Mix v Teamsters #362 [1971], ABIR, LR-1412-R-7).

[120] North American Inspection Services v Plumbers and Pipefitters #488 [1968], ABIR, LR-174-N-7.

[121] International Radiography and Inspection Services Ltd. v Boilermakers #146 [1973], ABIR, LR-1809-I-3.

[122] Warnock-Hersey International Ltd. v Boilermakers #146 [1973], ABIR, LR-1809-W-12.

[123] Western Stress Relieving Services Ltd. v Boilermakers #146 and Plumbers and Pipefitters #488 and #496 [1973], ABIR, LR-1723-W-1.

[124] C.F. Braun & Co. of Canada v Boilermakers #146 [1974], ABIR, LR-1809-B-10.

[125] Ibid., letter to W. Canning from G.A. Lucas 25 July 1974. Mr. Lucas also made a comment regarding the availability of useful information from the Alberta Board. It is a comment with which the wirter heartily agrees:

"There is simply not enough information appearing in any given certificate issued by the Board or its covering letters relating to the specific certification application to be able to determine whether or not the same or similar issues were raised in those cases as we were raising in the present hearing."

[126] Ibid., letter from Mr. R. Brunsdon to Mr. R.T.G. McBain, Q.C., 6 September 1974.

[127] Consolidated X-Ray Ltd. v Plumbers and Pipefitters #496 [1975], ABIR, LR-247-C-8.

[128] Conom Inspection Canada Ltd. v Plumbers and Pipefitters #496 [1975], ABIR, LR-247-C-9.

[129] The policy of the Alberta Board regarding "quality control" personnel may also have an influence here. The policy is to exclude such people from other units. This policy applied in this instance would only lead to further fragmentation.

[130] Transway Steel Buildings Ltd. v Carpenters District Council of Toronto (Local #27, 666, 681, 1133, 1963, 3227, 3233), [1975], OLRBR, 28. The British Columbia Board also seems unwilling to specify a particular sector for a bargaining unit (The Cattermole Trathway Contractors Ltd. v Operating Engineers #115 [1968], BCDOLSOA; Geddes Contracting Co. Ltd. v Operating Engineers #115 [1969], BCDOLSOA).

[131] Northern Gravel Products Ltd. v Operating Engineers #955 [1970], ABIR, LR-955-N-6.

[132] Wimpey Western Ltd. v Operating Engineers #955 [1976], ABIR, LR-955-W-13.

[133] Ibid., letter from Mr. R. Brunsdon to Mr. R.T.G. McBain, 19 March 1975.

[134] Catre Industries Ltd. v Operating Engineers #955 [1974], ABIR, LR-955-C-34.

[135] Krahn Homes Ltd. v Carpenters #846 [1976], ABIR, LR-443-K-3. In the case of Royal Oak Apartments, the Board specifically excluded house-building from the scope of the unit (Royal Oak Apartments v Carpenters #846 [1968], ABIR, LR-1655-R-8).

[136] Lethbridge Concrete Products v Lethbridge Concrete Products Employees Association [1971], ABIR, LR-1466, letter to F. Peta from G. Gough, 9 September 1971. This policy is similar to that of Ontario (Sack and Levinson, Ontario Board Practise, p. 298), but differs from that of British Columbia where the job titles only are listed in craft units and "employees" at a location or in a district is used for more general units. Specific exclusions are left up to the parties.

[137] Clarkson Electric v Electrical Workers #254 [1970], ABIR, LR-294-C-11.

[138] Brown and Marshall Electric et al v Electrical Workers #254 [1971], ABIR, LR-2045-B-3.

[139] Canadian Bechtel Ltd. v Carpenters #1325 [1972], ABIR, LR-154-C-12.

[140] C.F. Braun and Company of Canada Ltd. v Carpenters #1325 [1973], ABIR, LR-154-B-22.

[141] J. Mason & Son Ltd. v Painters #1016 and #583 [1971], ABIR, LR-481-M-6, LR-154-B-22; Western Caissons Ltd. v Operating Engineers #955 [1971], ABIR, LR-955-W-2. In the latter case, the employer took a rather strong stand on the issue of the proposed inclusion of non-working foremen in the bargaining unit:

"We very strongly oppose the inclusion of our foremen in any union agreement. These people are part of management and we refuse to have them under union control" (letter to J. Elsinga from F.D. McCarthy, Western Caissons Ltd.). Working foremen are included in the unit in Ontario (Sack and Levinson, Ontario Board Practise, p. 298).

[142] Ralph M. Parsons Construction Company of Canada Ltd. v Operating Engineers #955 [1970], ABIR, LR-955-P-9; G.R. Byer and Associates v Wood, Wire and Metal Lathers #205 [1971], ABIR, LR-1048-B-6; Poole Construction Co. Ltd. v Carpenters #1325 [1971], ABIR, LR-154-P-3; Industrial Waterproof Systems Ltd. v Labourers #92 [1973], ABIR, LR-1655-I-5.

[143] Universal Industries Ltd. v Boilermakers #146 [1969], ABIR, LR-1809-B-1; Humphrey's and Glasgow (Canada) Ltd. v Labourers #92 [1971], ABIR, LR-1655-H-11; Apollo Construction Ltd. v Labourers #92 [1971], ABIR, LR-1655-A-15; Murdock Production Equipment Ltd. v Murdock Production

Equipment Employees Association [1973], ABIR, LR-132.

[144] This policy parallels that of Ontario as outlined by Sack and Levinson (Ontario Board Practise, p. 73):

"In craft units, non-working foremen are considered as managerial and working foremen as coming within the unit; however, in the final analysis, the status of any particular foremen depends upon a careful scrutiny of his functions."

[145] St. Vincent's Hospital v Hospital Employees Union #180 [1974], CLRBR, 367. In Ontario, the Board is not permitted to include guards in a unit with other employees, nor may the Board group the guards in a separate unit represented by a union that "admits to membership, or is chartered by, or is affiliated, directly or indirectly, with an organization that admits to membership persons other than guards" (Section 11). In short, guards may only be in separate units represented by a separate union.

[146] Humphrey's and Glasgow Canada Ltd. v Labourers #92 [1971], ABIR, LR-1655-H-1.

[147] Mon-Max Services Ltd. v Labourers #92 [1971], ABIR, LR-1655-M-18.

[148] Apollo Construction Ltd. v Labourers #92 [1971], ABIR, LR-1655-A-15.

[149] Batoni-Bowlen Enterprises Ltd. v Labourers #92 [1974], ABIR, LR-1655-B-23.

[150] Camwill Construction Ltd. v Labourers #92 [1972], ABIR, LR-1655-C-22.

[151] Supercrete (Alberta) Ltd. v Carpenters #1325 [1973], ABIR, LR-154-S-23.

[152] Dresser Industrial Products Ltd. v Iron Workers #805 [1975], ABIR, LR-2244-D-1.

[153] This discussion of the merits of employers' associations is based on the observations made in the following sources (the points made by each author, despite the fairly broad time span the sources cover, were remarkably similar--it would seem the debate has not changed much):

Otto Pollak, Social Implications of Industry-Wide Bargaining (Philadelphia: University of Pennsylvania Press, 1948); Edward Herman, "The Size and Composition of Bargaining Units," Task Force Support Study, 1968 (Mimeographed); John Abodeely, Appropriate Bargaining Unit (1971). James E. Dorsey, Accreditation in Construction Labour Relations (Halifax: Institute of Public Affairs, Dalhousie University, 1974).

[154] Through the employers' association the smaller employer is also able to take advantage of the association's ability to become involved in such "economics of scale" items as employee pension plans. Through the association the small employer can compete as an equal in

the field of "employee benefits," which adds another element of predictability to the labour force availability question.

[155] This more "professional" conduct on the part of the association's representatives also helps the group attract new members.

[156] Many of the "little guys" may also never get a chance to get into the "shuffle." The association requires, at its formation, and by its very nature, that the industry leaders "slow down" while those at the rear "speed up." Those who cannot meet the middle ground standards that the association must set will be forced to leave the industry altogether.

[157] H.W. Arthurs and John H.G. Crispo, "Countervailing Employer Power: Accreditation of Contractor Associations," cited by Goldenberg and Crispo, Construction Labour Relations.

Joseph Rose listed the following as the major reasons for the difficulties encountered by employer associations in the construction industry and the British Columbia Association in particular:

a. their heterogeneous nature--they try to provide too many services, the result being that industrial relations matters often do not get the attention they deserve;

b. partly because of the above, the desires and recommendations of those handling the industrial relations function are often ignored;

c. the association did not have the authority to actively control its members;

d. disputes between general and trade contractors and between groups from various geographical regions (rural groups trying not to be dominated by urban groups);

e. attitude among association members that higher costs could just be passed on to the consumer;

f. inability of the association to prevent national and independent contractors from getting interim and free-ride agreements; and

g. client pressures on association members to complete major projects without interruption (Joseph B. Rose, "The Construction Labour Relations Association of British Columbia: A Case Study," Labour Law Journal, July, 1976 , 407; also by J.B. Rose, "Accreditation and the Construction Industry: Five Approaches to Countervailing Employer Power," Industrial Relations, XXVIII, p. 565).

[158] Dorsey, "Accreditation in Construction," p. 7.

[159] The conceptual and practical difficulties are pointed out in the study paper by James E. Dorsey.

[160] Dorsey, "Accreditation in Construction," p. 32.

[161] Ibid., p. 34. [162] Alberta Labour Act, section 83(1).

[163] Ibid., section 83(2). [164] Ibid., section 84(1)(e).

[165] Ibid., section 84(1)(f). [166] Ibid., section 84(1)(g).

[167] Ibid., section 84(3)(b). [168] Ibid., section 86(1)(a).

[169] Ibid., section 91(2)(a). [170] Ibid., section 91(2)(b).

[171] Ibid., section 91(2)(c). Notable by its absence is the old provision that allowed the registration to be cancelled after the 60th day of a strike or lockout. This provision clearly allowed dissident employers to prolong the strike, and as H.D. Woods Pointed out:

"The opting out provision could also be used by a union to destroy an employers' association. By refusing to settle on any terms it could prolong a strike for more than sixty days and then enter into collective agreements with some employers. This would defeat the very purpose of accreditation" (Labour Policy in Canada, p. 268).

[172] Alberta Labour Act, section 90.

[173] The Labour Relations Act, section 115(2)(a) and 115(2)(b).

[174] Ibid., section 115(3). [175] Ibid., section 118(1) and 118(2).

[176] Ibid., section 114. [177] Ibid., section 119(1).

[178] Labour Code of British Columbia, section 59(2).

[179] Ibid., section 59(3). [180] Ibid., section 59(5).

[181] Ibid., section 59(6).

[182] Woods, Labour Policy in Canada, p. 272. Wood's general opinion on the enactment of accreditation legislation was that:

"Accreditation, while fraught with difficulties, should benefit employers as a group. But perhaps most important of all is the fact that these moves, by adding to the security of both sides, may reduce their excessive preoccupation with the need to defend established rights and privileges and free them for the more constructive tasks of transformation which the dynamics of the industry requires" (Ibid., p. 286).

[183] Arthurs and Crispo, "Countervailing Employer Power," cited by Goldenberg and Crispo, Construction Labour Relations, p. 406.

[184] Alberta Roadbuilders' Association v Operating Engineers #955 [1970], ABIR, #1.

[185] Statement on original application form, ibid.

[186] A particularly comprehensive case was presented by Northern Gravel Products Ltd. The company listed the following as reasons why it did not belong in the ARA-Operating Engineers registration:

a. Northern Gravel used a large number of gravel trucks, and most of its employees were in the bargaining unit of the teamsters, not the operating engineers;

b. Northern Gravel was not a heavy contractor nor a roadbuilder;

c. Northern Gravel operations were year-round, not seasonal like the operations of others in the association;

d. a gravel supplier operated from a fixed location using much less mobile equipment;

e. the company was not, had not been, and did not wish to be, a member of the ARA;

f. Northern Gravel was a subsidiary of BACM Ltd. and operated as the supply division of that conglomerate--Standard General Construction was the construction division and it was a member of the ARA;

g. the overall confusion since the registration of the ARA had made collective bargaining impossible; and

h. "the inclusion of gravel supply companies in the certificate could result in an alien minority being a weak, unheard voice in times of possible labour disputes between local 955 and the Alberta Roadbuilders' Association" (letter from W.T. Thomson to R.B. d'Esterre).

Similar statements were also voiced by Steel Brothers Ltd.

[187] Ibid., letter from R.V. Faiers to R.B. d'Esterre, 19 October 1971.

[188] One employer had pointed out that much of what went on in the shop had little to do with equipment repair or maintenance related to either roadbuilding or heavy construction, and that it was not reasonable to include such activity in the ARA bargaining unit. The general frustration level of all parties involved in attempting to formulate a suitable unit description is illustrated by the following portion of a letter written at the time:

"We are finding that it is almost impossible to determine what contractors are within the registration and this is particularly important because we are presently in collective bargaining with the union"(letter from D.J. Ross to G. Gough, 4 April 1972).

[189] Ibid.

[190] Alberta General Contractors Association v Operating Engineers #955 [1971], ABIR, #6.

[191] Ibid., original application.

[192] Ibid., letter from N.B. Coutts to G. Gough, 2 January 1971.

[193] Heavy construction was deleted because it conflicted with the sectoral boundaries of the Alberta Roadbuilders Association.

[194] Boilermaker's Contractors Association v Boilermakers #146 [1971], ABIR, #19. The original application read:

"Persons, firms and corporations who employ employees who are members of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers employed in field construction

work."
The second attempt read:

"Employers employing members of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers on and for field construction, erection, rigging, field fabrication unloading and work involving assembling and dismantling."

The third attempt read:

"Employers employing members of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers on and for steel-plate, tank and boiler construction in the field, including erection, rigging, field fabrication, unloading and work involving assembling and dismantling in connection therewith."

The Board still did not like the reference to membership in the Boilermakers local. One final and ultimately successful attempt was made.

"All boilermaker field construction, erection, rigging and field fabrication, unloading and work involving assembling and dismantling."

[195] Alberta Roofing Contractors Association v Sheet Metal Workers #254 [1972], ABIR, #15.

[196] Ibid., letter from J. Elsinga to E.C. Thomas, 2 December 1971.

[197] Although the web is a tangled one it appears that the association applied for two separate registrations, each with a different union local, but each covering similar work jurisdictions. Some of the association members had two collective agreements each, one with one local covering sheet metal workers, the other, with a different local, covering roofers. In order to cover all the work done by member employers the association applied for registration with each local.

[198] Piling Contractors Association of Alberta v Operating Engineers #955 [1971], ABIR, #18. The trade jurisdiction sought was:

"All work related to all types of foundation piles and caissons, employing operators of boring machines (crane and truck mounted), pile driving machines (crane mounted and Franki Type Hoists), leadmen and riggers for pile driving machines, swampers, welders, mechanics, and ironworkers."

The Ornamental Ironworkers did not like the unit description, in particular the use of the words "All work related," "Welders," and "Ironworkers."

[199] Ibid., letter from G. Gough to F.D. McCarthy, 30 June 1971.

[200] Electrical Contractors Association v Electrical Workers #424 [1971], ABIR, #2.

[201] Ibid., letter from D.J. Ross to G. Gough, 17 January 1972.

[202] The registered unit read "All electrical construction work performed by employers engaged in the construction industry (excluding work in connection with communication operations)."

[203] Canadian Plumbing and Mechanical Contractors Association v Plumbers and Pipefitters #496 [1971], ABIR, #13.

[204] The pipeline contractors themselves, when applying for registration of their association, found that their inclusion of "underground and marine cable" construction in the unit description created a conflict with the Electrical Contractors, who were also involved in such activity. It was suggested that the reference be dropped altogether, or at least a clarity note be added to the effect that the unit was not to interfere with existing work and contractural jurisdictions. The Board apparently felt the matter was best worked out by the parties themselves, for it declined to do either. (Pipeline Contractors Association of Canada v Operating Engineers #955 [1973], ABIR, #21.)

[205] Southern Alberta Sheet Metal and Roofing Contractors Association v Sheet Metal Workers #8 [1975], ABIR, #38.

[206] Ibid., letter from C.G. Virtue, Q.C. to W. Canning, 1 May 1974.

[207] Ibid.

[208] Ibid., letter from C.G. Virtue, Q.C. to W. Canning, 8 November 1974.

[209] Ibid.

[210] Medicine Hat Sheet Metal Contractors Association v Sheet Metal Workers #8 [1975], ABIR, #53.

[211] Ibid., letter from L.D. Wilkins to W. Canning, 26 November 1974.

[212] Ibid.

[213] Ibid.

[214] Ibid., Reasons for Decision of 10 April 1975.

[215] There were several problems with the constitutional makeup of the association itself. The power granted to the central council of the association was seen as impairing "the group rights of members within trade divisions to freely negotiate and enter into collective agreements with trade unions," (A.C.L.R.A. v Plasterers and Cement Masons #324 [1974], ABIR, #36.) and in some applications it was found that the trade division had been created before the authority had been granted, within the association structure, to create such a unit (A.C.L.R.A. v Iron Workers #720 [1974], ABIR, #23.)

[216] A.C.L.R.A. v Iron Workers #720 [1972], ABIR, #23.

[217] Trade Division is defined in the A.C.L.R.A. constitution as "a group of members consisting of a unit appropriate for registration

under the Alberta Labour Act, being members carrying on the same trade, and who are parties to a uniform agreement with a trade union . . ."

[218] A.C.L.R.A. v Iron Workers #720 [1974], ABIR, #48, Reasons for Decision of 6 February 1975.

[219] A.C.L.R.A. v Painters and Allied Trades #583 [1975], ABIR, #48. Reasons for Decision of 21 January 1975. The Board has also registered trade divisions, for example, the Millwright Trade Division (A.C.L.R.A. v Carpenters #1460 [1974], ABIR, #28.)

[220] In the case of the Canadian Automatic Sprinkler Association the Board appeared to stray from this policy in creating a narrow unit encompassing "sprinkler fitting construction work." The role of tradition appeared to dominate in this case (Canadian Automatic Sprinkler Association v Plumbers and Pipefitters #496 [1974], ABIR, #39.)

[221] The policy of the Alberta Board would appear to be quite similar to that of the Ontario Board. The Ontario Board defines units in relation to industry sectors as defined in Section 106(e) of the Act, and the geographic jurisdictions of the established craft unions. (Sack and Levinson, p. 305). The predominant position of the geographical jurisdiction of the trade union is clear in the following Board comment:

"The appropriate unit of employers should therefore basically relate to the bargaining rights which are a condition precedent to the making of an application for accreditation. (Hamilton and District Sheet Metal Contractors Inc. v Sheet Metal Workers International Association #537 [1971], OLRBMR.)

Chapter 5

THE RETAIL INDUSTRY

The Alberta Board devoted a considerable portion of its certainly finite resources to the handling of unit determination problems arising out of what may be generally termed the "retail" industry. For the purposes of this discussion this sector of the economy will encompass such functions as retail department and food store outlets, the ostensibly wholesale apparatus that supports these undertakings, retail equipment and parts operations, and hotels, restaurants and similar ventures catering to the prepared food and drink market.

There are several characteristics of this sector of the provincial economy that affect the industrial relations climate within it, and logically then, the question of the appropriateness of any given bargaining unit. The industry is widely dispersed, particularly in the food and department store sectors. Such business concerns naturally appear wherever market conditions are or will become attractive. The population in such areas need not be great or of any particular demographic type, the need for food and assorted standard dry goods being relatively constant, at least within provincial boundaries. The activity itself is confined to a single location, as opposed to the shifting worksite of the construction industry. The size of the operation can vary markedly though. Each firm faces a localized market to a great extent, and thus the size of the retail outlet must closely parallel the size of this market. The tremendous variances in market size, from huge urban to very small rural, in Alberta, requires that retail operations also vary to the same extent.

The retail industry work force is not as diversified, in terms of skill levels and types of training, as that found in the hospital industry, and to a lesser extent in the construction industry. Within any given retail outlet one is not likely to find the extremes of both highly trained professionals and hardly trained labourers. This work force is also likely to have a large proportion of female secondary bread-winners and part-time personnel, both required by the industry to meet the environmental conditions of peak daily and seasonal loads and weekend and evening hours of operation in some locations. A particularly important characteristic of the industry, from a unit determination point of view, is its lack of any strong tradition of unionization of any type. There is no deeply rooted tradition of craft or industrial unionism, nor are there any longstanding commitments to labour organizations of one sort or another. The industry is, in this respect, a sort of "frontier" on the fringe of the organized sections of the economy.

On the surface the characteristics of the retail trade, to this point, do not appear to pose any particularly difficult problems from a unit determination standpoint. A single location employing a fairly homogeneous work force would seem to be a logical bargaining unit in and of itself. The fact that the location may be in a separate and distinctive geographic location only reinforces the appropriateness of the single unit. The issue is, however, not nearly as straightforward as this. Retail food and department stores and their supporting wholesale operations (and to a lesser degree hotel and equipment operations) are, particularly in Alberta, usually part of some large "chain" operation. The age of the corner store-single entrepreneur is most assuredly dead in this industry, with the province-wide (or nation-wide) integrated corporation now the rule rather than the exception. Functions such as warehousing, procurement, advertising, and personnel administration and industrial relations are handled by "head office" professionals rather than local management.

If the traditional community of interest criteria are applied to the situation in the retail industry a choice between clearly opposite alternatives is revealed. There is a strong case in favour of certification of single location units, or at most, units restricted to narrowly defined geographical areas. People who work together in a single location develop a feeling of mutual interest and solidarity. They face a common labour market and will likely be affected in similar ways by changes in that market. In rural situations such people may be isolated to the extent that activities in other locations in which the firm operates are of marginal interest at best.[1] Also of concern is the low overall level of organization in the industry. The fact that much is left to do, from an organizer's point of view, in many locations makes the single unit concept rather attractive, as was pointed out in the Harvard Law Reveiw:

> The process of organizing such peripheral industries requires constant contact with employees in order to sustain interest in the organizational drive. It is thus extremely difficult for unions, especially smaller ones lacking substantial resources, to win at any one time the votes of small and widely separated locations. In contrast, the task of winning certification in such locations one at a time is much easier and permits the union to build its strength gradually.[2]

If the desires of the employees are considered the smaller unit is clearly favourable. The problem of employee free choice and the recognition of local circumstances that caused much difficulty in the craft-industrial unit conflict is also present here. R.M. Hall, however, felt that when the issue was in doubt the need to maximize this free choice must not prevail:

> However, when both the units in question are appropriate and there is a direct clash between the policy in favour of collective bargaining (stability) and the policy in favour of maximizing the effect of individual free choice, the latter must yield to the former.[3]

The case in favour of larger units, both in terms of area covered and number of employees included, is also impressive. The primary condition dictating a more general bargaining unit is the administrative structure of the employer. If the real authority to affect the terms and conditions of employment of an individual is vested in those in the upper echelons of an administrative hierarchy, then it can be argued that to create a bargaining unit that contradicts the existing structure by placing the individual in a unit that does not coincide with that structure is not conducive to sound and efficient collective bargaining. It has also been pointed out that labour relations boards have generally recognized that it is not conducive to sound bargaining to force the employer to radically alter his method of operation in order to accommodate collective bargaining. A centralized employer apparatus should, then, be matched with a centralized bargaining structure. Two considerations do detract from the logic of matching bargaining structure and employer administrative structure. Firstly, it is possible for the employer to create incredible confusion by changing the configuration of the administrative structure. A particularly hostile employer could even use the tactic to deliberately disrupt the bargaining process. Secondly, the administrative structure is set up to deal with a multitude of problems, not the most important of which, at least in the employer's eyes, is industrial relations. There is no evidence to suggest that a structure designed to cope with certain market conditions will necessarily be ideal for dealing with all industrial relations problems.[4]

Doubts have also been raised about the viability of smaller units, particularly in situations where such units face a very large employer. The bargaining power of such small units may be minimal, and it is an accepted fact that where bargaining power is unequal, as in the pre-registration days in the construction industry, unstable labour relations usually result. There also seems to be a fear that if single location units are recognized, the next step will be to divide up these single locations, particularly in the urban areas where the work force at any single location may be quite large, into departmental units or some similar arrangements. R.M. Hall was not optimistic regarding this type of arrangement:

> The store-wide (or city-wide) unit tends to be more permanent and less prone to disruptiveness. Under such conditions, some what paradoxically, the varied interests of the employees, immediate and long range, are more likely to get fair consideration than when an employer must beat down wages in the face of whipsawing.[5]

Reference to an employer's administrative structure, in this sector, usually results in the unit being defined in relation to some geographic area. Such a reference also has within it the potential for future difficulties. Although the phrase is tossed about with abandon by many authors in the field, there is really nothing inherantly clear and unambiguous about a geographic boundary. There is not necessarily a clear division between such areas that will be easily recognized by all parties. Political boundaries are often used as a barely workable compromise, but again there is no data to suggest that a city limit or a county limit drawn on a map necessarily defines an area that is logically appropriate for collective bargaining purposes. If the reference to a geographical area encompasses a number of locations, and potentially an even greater number in future, there arises the question of "sweep-in". In the initial election there is the possibility that several locations that vote against a particular bargaining agent will still be included in the unit (much like the inclusion of dissenting craftsmen in an industrial unit). There is also the possibility that employees at new locations opened in the same area in the future will never have an opportunity to express any opinion on the acceptability of the bargaining agent, they will be automatically "swept-in" because they fall within the geographical boundaries of the unit. Both occurrences do not rest confortably within the context of a democratic society.

The retail industry has within it, then, most of the problems that have created unit determination difficulties in other sectors of the economy. There is the basic question of individual rights versus industrial relations stability. There is the question of the appropriateness of an all-encompassing single location unit, an all-encompassing geographical unit, or some subdivision of each. There is also the question of the relative importance of conflicting community of interest criteria and how and when each is to be applied.

The activity of the Alberta Board in the retail industry can be examined by looking at four general areas within the industry itself. There are problems that were common to two or more of these sectors, and problems that occurred because of some unique environmental stimulus that was not active in other areas.

THE CHAIN OPERATION

The Multi-Location Question

A clearly discernable subdivision of the retail sector is the "chain" operation. Such organization structures are commonly found in food and department store enterprises, and in recent years in the marketing of fast-food services. The bargaining unit problems associated with such ventures are well illustrated in several cases recently handled by the Ontario Board.

In the case of Kenmount Holdings Ltd[6] the Board was forced to decide whether a single or multi-location unit was appropriate. In deciding that the multi-location unit was appropriate the Board delineated some of the factors that it has considered in making such decisions:

> In situations where an employer has employees at more than one location in a geographic area the Board takes into account a number of factors in determining what constitutes an appropriate bargaining unit. More particularly, the Board considers whether there is an interchange of employees between locations, the number of employees, and the type of operation carried out at each location. As well the Board takes into account the history of bargaining units in a particular type of operation. A further consideration is the desires of the parties.

In the case of McDonald's Restaurants of Canada Ltd[7] such considerations outweighed the influence of the employer's administrative structure. The Board noted that each outlet did have some discretion, but that the manager was restricted to acting "within pre-arranged policies or standards."[8] There was also nothing particularly unique about company policy toward the stores in the area under consideration, as the Board noticed:

> There is no specific policy which would set apart the Windsor area and if the company's personnel policies were considered as a factor in determining the appropriate bargaining unit it would tend to support a national or at the very least an Ontario bargaining unit rather than a Windsor unit.[9]

The Board obviously did not consider any of the company personnel policies, for a single location unit was certified. The fact that the store served a geographic area that was discernable to the Board, and that there was little or no interchange between sites convinced the Board that there was a strong enough identification among the employees with the particular location to warrant its separation as a distinct bargaining unit. A similarly standardized situation was faced in the decision regarding Ponderosa Steak House.[10] In light of the McDonald's decision the union applied for a single store unit. The employer felt that the unit should cover the two existing locations within the city limits. Personnel policies and rules were standardized within each of the five company divisions in the country. Managers at any one location had authority to assign work and grant leaves of absence, but there was considerable doubt regarding their real authority to hire and fire. There was a very limited employee interchange between the two stores in question. The Board noted that it normally considered five community of interest criteria; (these being the ones it had set out in the Usarco case of 1967) the nature of the work performed, the conditions of employment, the skills of affected employees, administrative circumstances and the geographical situation. In this case the Board ruled the first three criteria unimportant because they were identical in each store. The employer's administrative structure supported a vast area unit, which the Board has previously rejected. The Board certified the single location unit on the grounds of geographical distinctiveness. The local labour market that the outlet drew on and the lack of interchange with the other outlet were used to support the decision. Member Robinson strongly dissented from this decision, noting that (as do Sack and Levinson) it was Board practise, under such conditions, to certify at least metropolitan sized units. He had seen nothing in the instant case to cause him to reconsider the wisdom of this policy.[11]

The distance between the proposed elements of the multi-location unit did play a major role in the decision regarding the Wix Corporation.[12] Here the Board refused to include two separate locations in the same bargaining unit. In this case the employer had argued that common management, functional integration, and identical wage and working conditions made it completely logical that the separate plants be placed in the same unit. The employer was dismissed with the following comment:

> Nevertheless, it has never been the Board's practise, especially in the absence of regular interchange of employees, to include employees in widely separated localities in the same bargaining unit unless there are compelling reasons for doing so.[13]

The Board punctuated this comment by pointing out that only in the case of the construction industry and retail and variety store chains did it certify units for geographical areas. Such reference appears to be lacking in the cases of McDonald's and Ponderosa Steak House.

The uncertainty of the Ontario Board has apparently not spilled over into Alberta. The Alberta Board, when faced with similar decisions, invariably certified the unit with respect to a "greater" metropolitan area.[14] Attempts to have units for specific locations were rejected,[15] and employer protests were apparently to no avail. In the case of O.K. Economy Stores Ltd.[16] the employer made the following comment regarding the Board's certification of an area-wide unit:

> We have only one store in Medicine Hat and at the moment have no thought of future expansion. Looking into the future, we feel that if a second store opened that the employees should have the democratic right to join or not to join a union of their own choice.[17]

The Board reply to this statement in defense of individual rights was as follows:

> In this connection, the Board considers as an appropriate unit employees employed in stores operated by an employer in an overall urban area. It is true that if a new store is established by an employer in a city where such a certificate is held by the union, the employees would fall within the scope of the certificate. On the other hand, if for example, your company operated two or more stores in one city, the union in applying for certification as bargaining agent would not be able to effectively apply for certification at each store as such a unit would not be appropriate, one application would have to be made covering all stores in the city area.
>
> This type of bargaining unit has evolved in previous years and is part of a trend in labour relations that collective bargaining is carried out most effectively under the largest unit of employees possible keeping in mind appropriateness of unit description. I might add as an example, retail chains with a number of outlets in the city, would perhaps find it most cumbersome to be required to bargain with the union on an individual basis for each outlet . . .[18]

Alberta policy in such cases would seem to be dominated by the stability considerations inherant in the "largest unit of employees possible", and the possible efficiency of bargaining obtained through a careful matching of bargaining and administrative structures. The absence of any attempts to change this Board policy through applications for units of a different configuration indicates that the policy has at least been accepted by the parties involved.

Managerial Exclusions - Department Heads

Although the multi-location controversy, with regard to chain operations, did not create any major problems for the Alberta Board, there were some difficulties encountered regarding the managerial status of some individuals, and the demands for separate representation rights made by some groups in certain multi-location units.

The question of managerial status and exclusion was raised in the case of Tamblyn Western Ltd.[19] The employer did not agree with the Board's exclusion of "manager" only. The company felt that the merchandise managers should also have been excluded on the grounds that they hired and fired employees, they trained new employees, they supervised staff, they ordered merchandise from the warehouse and from salesmen, and they prepared the time sheets used for payroll purposes. In this particular case the Board declined to exclude such personnel from the bargaining unit, and in doing so made this observation:

> In making its decision it was the opinion of the Board that the above mentioned employees were not employed in a confidential capacity in matters relating to labour relations nor did they exercise managerial functions beyond those that might normally be performed by working supervisors normally included in bargaining units. It was noted that none of the aforementioned employees handled or had any direct dealings with salary records, financial records, contract administration, or any exclusive authority in the hiring and firing of any staff employed by the employer. It was further noted that, with respect to the hiring of staff, such hiring was always done in conjunction with, and what appears to the Board, approval of the Store Manager or District Manager.
>
> According to the testimony of the witnesses none of the merchandising managers had at any time set any shift schedules of any kind nor scheduled the work for part-time staff. It was further noted these employees did set retail prices of some articles and did adjust some retail prices relative to competition prices, but in the opinion of the Board these were very minor in nature and were for the most part directly controlled by the District Manager. Testimony disclosed that, for the most part, retail prices were established by the company office in Vancouver.
>
> In addition the Board was cognizant of other positions with other employers in the retail field that in their opinion exercised at least the equivalent level of supervision and/or exercised functions of a higher level than the 'merchandising Managers' and are included within existing bargaining units.[20]

The Board also closely examined the positions of "meat manager" and "head meat cutter" in two rather similar cases. In the case of Redcliff Foods[21] the Board certified a unit of meat department personnel without providing any exclusions for managerial personnel. The management of the firm protested the omission:

> Our operating policies direct that the Head Meat Cutter is completely responsible for his department. Not only is he responsible for the production of gross profit, but he is responsible for ordering of supplies, hiring and firing of staff, and is, therefore, in a completely supervisory capacity, although,

> of course, he does use the tools of his trade.
>
> While he is generally subject to the overall authority of the store manager he is completely in direction of his own department . . .[22]

The Board response to this protest was to refer the employer to a case in the fairly distant past (1955) in which the precedent for inclusion of meat department managers had been set. The employer replied to this reason for decision by pointing out to the Board that time had changed the role of such people, and that the role was not identical in all locations:

> . . . our industry has changed very considerably in the intervening years, and furthermore, the position of the Head Meat Cutters at IGA stores is somewhat different to their opposite numbers at Canada Safeway Stores.
>
> Our Head Meat Cutters enjoy a great deal more authority and autonomy for the direction of their departments. They are allowed to hire and fire their staff as they see fit. They are completely responsible for ordering, and the financial operation of their departments and, therefore, we feel that they are in a supervisory capacity even though they use the tools of their trade.[23]

The employer also claimed that the Board exempted head bakers from the units in their departments, and that such people occupied a position very comparable to those in dispute.[24] The dispute over the status of meat department heads continued in the case of O.K. Economy Stores Ltd.,[25] where again the Board refused to exclude the alleged manager of the meat department. In addition to the arguments voiced in Redcliff Foods the employer also pointed out that the isolated nature of the store in question made it necessary for the store manager and the meat manager to assume a greater amount of responsibility. The arguments again had no effect on the Board's decision.

The status of department "manager" in retail outlets was also raised in Ontario. In the case of Dominion Stores Limited[26] a controversy arose over the status of bakery department heads. The

Ontario Board reiterated its position that managerial exclusions were granted only when the person in question had the authority to make independent policy decisions and also was in a position to materially affect the conditions of employment of other employees. The evidence indicated that the bakery department manager did not get involved in any policy decisions, and that "all matters of any consequence were predetermined by the company head office."[27] As has happened in Alberta, the department head was not excluded from the unit.

The disagreement over the status of department heads, particularly those in the meat and bakery departments of food chains, is possibly caused by the status given to regular employees in these departments. They are one of the very few groups in the retail trade that are granted a status closely akin to a craft.[28] In the majority of cases those involved in the "preparation for sale, handling and selling of fresh, frozen, cooked and smoked meats, fish and poultry" are placed in a separate multi-location unit and are represented by their own separate bargaining agent,[29] and while the practise is not as consistent in the case of bakery workers, there is still serious consideration given to the possibility of their exclusion.[30] Since special status is granted to such groups, it would seem that employers assume that the individual ostensibly in control of such personnel is a "manager". The Alberta Board has not, at least so far, agreed. In fact, the record indicates that those seeking managerial exclusions have not faired too well before the Alberta Board. The centralized nature of the policy making functions and the personnel functions, the two most important managerial activities from a unit determination point of view, appears to make it extremely difficult to obtain exclusions for personnel below the level of the manager in charge of a particular location. The employer's administrative structure plays a major role in such cases.

The question of additional department-oriented units, other than those of meat department and bakery workers, does not appear to have arisen in Alberta's retail industry, with all-employee units being well accepted, at least till now.[31]

WHOLESALE OUTLETS

The portion of the retail industry that the consumer usually encounters is supported by a rather large and complex "wholesale" apparatus. Storage and processing facilities are needed, particularly in the food industry, in quantities far beyond the capacity of each single location. The distinctive nature of some of these facilities produced a number of unit determination questions that the Alberta Board was forced to consider. Although not as widely dispersed as the actual retail outlets, these support outlets are still essentially multi-location, raising the issue of single or multi-location bargaining units. Such operations involve a considerable number of office and warehouse workers, raising the question of the bargaining status of each group, and finally, since a prime function of these ventures is to deliver the necessary items to retail outlets for subsequent sale, there is the question of the status of those who make such deliveries.

The Multi-Location Question

The policy of the Alberta Board regarding multi-location units differs in the wholesale sector as opposed to the clearly retail operation. The Board does grant single location units, and it will grant multi-location units also, but in the latter case the specific addresses of the locations to be included in the unit are usually part of the description. The geographically oriented unit providing for future "sweep-ins" is not found here. This comment in the case of Dynatrade Canada Limited[32] is indicative of present policy in this sector:

> This trade union has been certified for retail outlets on an area-wide basis but it is not Board policy to apply this approach to non-retail operations. It is my understanding that this company operates from a single site and therefore the unit should reflect the specific location of the site.
>
> . . . You may also wish to indicate to them (the union) that if more than one warehouse site was operated in an area it would be appropriate to apply for all such sites under one single application identifying in the proposed unit description the location of each site.

Unit descriptions that refer to geographical areas are altered to encompass only the specific location or locations in operation at the time of certification,[33] and those referring to several locations (use of the word "plants" for instance) are altered to refer to only the single existing location.[34]

The writer could not find any definitive statement from the Board that would clearly delineate the Board's reasons for applying a different policy in the case of wholesale operations, but it is not impossible to speculate regarding the major reasons. There are far fewer wholesale outlets than retail outlets in any given geographical area, therefore, the problem of unit fragmentation is not nearly as accute. The Board comment regarding the O.K. Economy Stores case indicated that fragmentation is the major concern of the Board, and that it is willing to subjugate individual rights, to some extent, in order to avoid such fragmentation; but the Board is not apparently comfortable in doing so, for when the threat of excessive fragmentation is removed, individuals are again allowed to determine, on a single location basis, who will or will not represent them.

Unit Type

Board reluctance to certify on an area-wide basis is also probably linked to the existence of a more complex work force in the wholesale operation. It is simply harder to generalize to too great an extent when a larger number of different types of workers are involved. These larger wholesale outlets have office staff, sales staff, warehouse and cleaning staff and delivery staff. The real problem may be not whether the Board should generalize the unit to a geographic area, but rather, what should be bargaining structure at each location.

Clerical staff at locations that also include warehouse or plant facilities are a problem for labour boards. The situation is not as clear as that of office workers in a "head office" where the unit, with perhaps managerial, confidential or professional exclusions, is almost presumptively appropriate. The office staff in warehouse and plant situations are in contact with other workers in the building, often working quite closely with people who would normally be classified as "blue-collar" workers. A case can be made in favour of including such people in the warehouse unit rather than in any office unit. G.W. Reed has explained the practise of the Ontario Board in such instances; instances that he felt were definite "problem" areas:

> Clerical workers physically located in or immediately adjacent to the plant rather than in the main or general office and whose main function is to service the plant, for example, foremen's clerks, production clerks, shipping and receiving clerks are normally included in a plant unit on the grounds that their community of interest lies with employees in the plant rather than with the office employees.[35]

The Ontario Board does not, then, immediately associate "clerical" with "white-collar" or "office". It is possible to be a factory or warehouse "clerical" and still be part of the "blue-collar" unit.[36]

The policy in Alberta appears to be to merely create separate units for "office" and "plant" or "warehouse" workers,[37] with specific units of "outside" workers created when the situation warrants it, as it did in the case of Purity Co-Op.

> . . . please be advised that the Board has certified trade unions as bargaining agents on a number of occasions for plant employees and outside employees each as separate and distinct bargaining units or overall bargaining units, depending upon the circumstances.[38]

Such "outside" units are usually made up of drivers and sometimes the driver-salesmen that provide the link between the wholesale and retail outlets, but whether the drivers receive their own separate unit is usually dependent upon their exact functions. Where the driver is also a salesman he is usually excluded from the office and warehouse units and granted separate bargaining status,[39] usually on the grounds of his differing form of remuneration and lack of a single work location. Where the driver does not sell and is remunerated in a manner similar to the warehouse or plant workers he is usually included in the unit.[40]

The bargaining structure in the wholesale sector is, on the whole, more complex than the one or two unit area-wide structure found in the retail trade. The separate interests of office workers, plant and warehouse workers, and driver-salesmen are recognized by the Board and adjustments are made; the spectre of unit fragmentation apparently being far enough below the horizon.[41]

PARTS AND EQUIPMENT RETAILERS

Problems similar to those encountered in the average wholesale venture are found in one part of the purely retail industry, namely parts and equipment retailing undertakings. The multi-location question is an issue occasionally, since there are both small single location employers and rather large multi-location ones. At any one location there are office staff, sales staff, and parts and maintenance staff of various sorts, raising the question of proper units, given the various communities of interest.

Unit Type

The policy of the Alberta Board appears to be to try to restrict the structure, wherever possible, to two general units in this sector of the retail industry, a unit for office personnel, and a unit for mechanics, partsmen and other workers involved in the actual handling and repair of equipment.[42] Attempts to represent subdivisions of either unit have not been well received. At Cummins Deisel Power Ltd.[43] the Board frowned upon the applicant's proposal to create a unit for parts personnel only, while at Western Mack Truck Ltd.[44] partsmen were included in a unit of mechanics, body and fender men, and welders. At Enerson Motors Ltd. the Board rejected an attempt to gain representation for a part of the "shop" personnel with this observation:

> In the opinion of the Board in an automotive establishment of this nature where a craft union such as the applicant purports to represent classification of employees beyond craft classifications, such representation should not be restricted to less than an appropriate industrial or shop unit, where the trade union has jurisdiction to represent such a unit. It appears to the Board that the applicant, instead of making application to represent employees within an 'all-employee shop-type unit' has applied to represent employees in a bargaining unit shaped by the extent of organization made by the applicant.[45]

Where the number of employees is quite small, the Board will also grant an all-employee unit.[46] What is clearly missing in the parts and equipment retail sector is the identifiable "third unit" of outside workers, in particular, the group of truck driver-salesmen. Though some of the outlets may employ light-delivery drivers, their numbers and functions clearly are not sufficiently impressive to warrant separate bargaining status. Board policy in this area is thus quite logical, given the policy regarding the wholesale industry.

The Multi-Location Question - Unit Area

The question of the appropriateness of a single or multi-location unit has also been raised in this portion of the retail industry, but Board actions have not indicated any clear preference for either type of unit, unlike the situation found in the chain store and wholesale parts of the industry. At Fergusen Supply Ltd.[47] the Board turned down a unit of office workers that encompassed only the greater Edmonton operation of the firm because ". . . it was apparent that the unit described in the application, being limited to Edmonton only, did not include all of the employees of the employer falling within the classifications described in the application."[48] since the firm was active in Calgary as well. When the unit was altered to include both cities, with the addresses of the locations in each city included in the description, the unit was certified. At Union Tractor Ltd.[49] a unit encompassing the "City of Edmonton" was initially certified for shop workers. When the employer's operations were expanded to other centers the unit was expanded to cover these also, the reason being the high level of interchange of employees between the various locations; "the company had signified its preparedness to agree that the contract cover all of the employees in Alberta because, in that event, it would establish the conditions of employment no matter whether an employee was transferred to other locations in the province or not . . ."[50] A similar province-wide unit was also granted at R. Angus Tire Services Ltd.,[51] but at McCoy Bros Ltd.[52] the unit was restricted to the specified company addresses (in Edmonton) included in the description, the employer's operation not being widespread enough to warrant a more general unit.

HOTELS

A portion of the retail industry in which there has been a distinct evolution of Board policy is the hotel industry. Hotels, particularly large ones, have a rather diversified work force, reflecting the large number of services that such insitutions provide, ranging from basic services like food and accommodation to, in some locations, recreational and diversionary activities of many sorts. The interests of the employees are as varied as the services provided, and thus there is a distinct tendancy toward unit fragmentation in such establishments.

A unit that was recognized by the Alberta Board that could have been construed as being fragmentary was that of bartenders and porters and waiters associated with the serving of alcoholic beverages. In cases like Sheraton-Summit Hotels Ltd.[53] and King Edward Hotel[54] the Board certified units of workers specific to beverage rooms, but the changes in provincial liquor licensing laws made during the period covered by this study, which allowed for the serving of such beverages in several locations in a hotel, made it apparent that such a practise would produce far too much unit fragmentation, at least from the Board's point of view. In the case of Blackfoot Inn[55] the Board refused to grant a unit of bartenders and waiters specific to a particular tavern, and the Board's comment indicated that such units would no longer be considered acceptable:

> In reaching its decision the Board was cognizant that, in the past, certificates had been issued by the Board certifying this trade union for units of employees of individual food and/or beverage service rooms on the premises of one employer at one location. It was noted, however that this practise evolved from the time when employees had but one room in which alcoholic beverages or food were served and the Board at that time felt this practise was correct in light of the manner in which the food and beverage industry was operated.
>
> It is now evident that, increasingly, food and/or alcoholic beverages are served in several locations in an employer's premises and that the employees in each location do have close ties and a community of interest. Accordingly, it is the opinion of the Board that certificates should not flow to units of employees of a single location within an employer's premises when there are other locations within the premises which employ similarly employed employees.[56]

In the case of Atlific Inns (Alberta) Ltd.[57] the Board rejected another unit that was specific to one food and beverage outlet and indicated that a unit including "All employees employed in all food and/or alcoholic beverage services . . ." would now be the accepted unit description.

The Alberta policy of grouping food and beverage personnel together does differ from that of Ontario, where those serving beverages are still treated as a separate group. The Ontario policy has caused problems in deciding whether an individual is primarily involved in food or beverage related work. In the Seaway Hotels (Ontario) Limited[58] case the Ontario Board had to go to considerable lengths to decide whether a proposed unit of beverage related personnel should include a group of workers in a particular part of the employer's establishment. In the "Hook and Ladder Club" the emphasis shifted from food to drink depending on the kind of crowd the entertainment "headliner" brought in. The Board developed what it called a "prime purpose" test to decide whether the employees were "food" workers or "beverage" workers:

> That is to say, the Board will determine the prime purpose of the area of the employer's establishment where the employee is assigned and thereby will ascertain the purpose of employment commensurate with the customer's requests.[59]

Since the liquor license for the location in question provided that total liquor receipts could not exceed revenue from food sales the Ontario Board decided that the "primary purpose" was food and acted accordingly. The Alberta approach to the problem appears much less likely to cause such difficulties. The differences in employment conditions between the two groups of workers does not seem to warrant their separation and the difficulties encountered by the Ontario Board are perhaps rooted in the attempt to maintain the artificial division between the two groups.[60]

In the case of the Banff Springs Hotel[61] the Board dealt with the problem of potential unit fragmentation in the large hotel complex. The applicant sought a unit that encompased only the housekeeping, steward, bellman and laundry departments, as well as employees in departments not "specifically named". The Board rejected the application and outlined its reasons for soing so:

> In reaching this determination the Board was of the opinion that the unit comprised only a portion of an overall unit or units which the applicant has jurisdiction to represent. The unit fails to describe persons employed in a number of service departments or divisions of the employer and failure to do so, in the opinion of the Board, results in fragmentation of what would be an appropriate unit . . .
> This does not necessarily mean that the Board would only accept an overall unit based on the extent of the jurisdiction of the trade union, as the Board recognizes, in many circumstances, that there may not be a sufficient community of interest between certain groups of employees of the employer, e.g. security personnel, office personnel, and operating personnel.[62]

The applicant was not convinced by this Board reply and pointed out that departmental units had been certified by the Board in the past (which was true); what was different in this case? The Board explained the difference.

> The Banff Springs Hotel, as a resort hotel, is considered in a different light than hotels to which you refer who cater principally to the transient trade. The difference is characterized on one hand by the resort hotel oriented towards the providing of a complete package to guests, including recreational, social, and other activities, and, on the other hand, by the non-resort hotel which generally provides only a portion of activities available at the resort hotel and by a clientele who generally do not take advantage of the limited activities available.
>
> To follow your argument that the board should certify segments of a resort hotel on a departmental basis, and in consideration of the many departments established to provide a multiplicity of services, the end result could be a multiplicity of bargaining units . . .[63]

Although the Board did not condone excessive fragmentation in such ventures it did appear to be true to its statement regarding the recognition of legitimate differences in community of interest. At the Chateau Lake Louise[64] a unit for maintenance staff was granted despite employer protests that the unit only covered a group of twenty-five people in a staff of almost five hundred, as was the case at Hotel MacDonald,[65] where again a unit of maintenance personnel was recognized as appropriate. Those who clearly have a distinct community of interest are still able to obtain separate recognition.

In explaining its actions in the O.K. Economy Stores case, mentioned earlier in this chapter, the Alberta Board pointed out that there was a "trend in labour relations that collective bargaining is carried out most effectively under the largest unit of employees possible, keeping in mind appropriateness of unit description." From a geographical scope point of view the Board has remained in accord with the trend it observed. In the case of retail chain operations the Board clearly favours units encompassing a geographical area, usually metropolitan. The situation is similar regarding wholesale outlets, where multi-location units, with the locations specified, are usually endorsed. Where the situation appeared to warrant it, the Board also showed no qualms about certifying multi-location units with regard to parts and equipment dealers. The Board also indicated its desire to avoid fragmentation at any individual location, particularly in the cases involving hotels. Attempts to prolong or obtain separate recognition for small groups in such locations were not generally successful, with only those who were clearly distinct, in a large institution, providing any examples of "fragmentation". Unit scope was also broad concerning allowable managerial exclusions, with the Board being particularly stingy in granting such exclusions where the centralized nature of the employer's administrative structure cast doubt on the amount of "managerial" activity being carried out at any one location. The absence of any evidence of prolonged or overly enthusiastic protests against Board policies in this sector implies that the parties themselves may agree that this broad unit structure does produce more effective collective bargaining.

FOOTNOTES

The Retail Industry

[1] The existence of good highways, mass transit facilities, large geographical boundaries such as deserts and mountain ranges can all influence markedly the extent of geographical isolation. Herman lists the following as specific benefits of a single location bargaining unit, from a purely "bargaining" point of view.

a. since bargaining is done by those who understand the situation the contract is tailor-made to fit the situation;

b. the contract is more realistic since those who bargain for it must also live with it;

c. workers more readily abide by the terms of the agreement because they feel like they have really participated in its development. (Herman, The Appropriate Bargaining Unit, p. 103.)

[2] "The Board and Section 9(c)(5): Multi Location and Single Location Bargaining Units in the Insurance and Retail Industries," Harvard Law Review (Vol 79, 1965-66):812.

[3] R.M. Hall, "The Appropriate Bargaining Unit: Striking a Balance Between Stable Labour Relations and Employee Free Choice," Western Reserve Law Review (Vol 18, 1967):538.

[4] For example, a decentralized structure may be much more efficient in the handling of greivance matters than any centralized process.

[5] R.M. Hall, Striking a Balance, p. 527.

[6] Kenmount Holdings Ltd. v Labourers #183 [1976], OLRBR, 839.

[7] McDonald's Restaurants of Canada Ltd. v Hotel Employees Union #743 [1974], CLRBR.

[8] Ibid., p. 250.

[9] Ibid., p. 250.

[10] Ponderosa Steak House v Hotel Employees Union #743 [1974], CLRBR.

[11] Member Robinson had also dissented in the case of Forest Public House, where the Board granted separate units to three outlets owned by the same employer in a single municipal area. In this case the dissent was based on the heavily centralized nature of the employer's

administrative function (Forest Public House v Hotel Employees Union #743 1974 , CLRBR).

[12] Wix Corporation Ltd. v United Auto Workers [1975] , OLRBR.

[13] Ibid., p. 640. The stance of the British Columbia Board in such situations was clearly illustrated in the case of Olivetti Canada Ltd. The Board noted that it did not wish to support the "pyramid" method of union expansion whereby the incumbent union has its membership expanded without having to face a "test of strength" at the polls, but also that it was the responsibility of the Board to ensure viable and productive bargaining. In the final analysis the latter was predominant:

"If the two servicemen in Nanaimo are to have any chance of participating in meaningful collective bargaining, exercising some real leverage with the employer, they will have to do so as part of the larger bargaining unit. It is quite common for the Board to judge that multi-location units are appropriate for collective bargaining, and I do so find here" (Olivetti Canada Ltd. v Electrical Workers #213 [1974] , CLRBR).

The following cases produced examples of the multi-location units to which Mr. Weiler referred: Odeon Theatres (B.C.) Ltd. v Building Service Employees Union #244 [1967] , BCDOLSOA; Lodom Holdings Ltd. v Butchers #212 [1968] , BCDOLSOA; Cunningham Drug Stores Ltd. v Retail Clerks #1518 [1971] , BCDOLSOA.

[14] Bateman's Food Market Ltd. v Retail Clerks #401 [1969] , ABIR, LR-1026-B-1; Canada Safeway Ltd. v Retail Clerks #401 [1971] , ABIR, LR-1026-C-13; Tamblyn Western Ltd. v Retail Clerks #401 [1971] , ABIR, LR-2280-T-3; Cunningham Drug Stores Ltd. v Retail Clerks #401 [1971] , ABIR, LR-1026-C-15; Wetaskiwin Foods Ltd. v Retail Clerks #402 [1971] , ABIR, LR-228-W-2; Queen City Meat Market v Amalgamated Meat Cutters #312 [1974] , ABIR, LR-1038-Q-1; International Centura Industries v Retail Clerks #401 [1975] , ABIR, LR-1026-C-3; Fruit Huts of Canada v Retail Clerks #401 [1975] , ABIR, LR-2280-F-1; Canada Safeway Ltd. (Lloydminster) v Retail Clerks #401 [1975] , ABIR, LR-1026-C-21; Hoyt Hardware Ltd. v Retail Clerks #397 [1975] , ABIR, LR-2280-H-2. This practise has not changed since Edward Herman did his study. In that study he made this comment regarding the practise of the Alberta Board:

"The ABIR is willing to certify multi-location (or multi-plant or multi-store) bargaining units when these units are within the boundaries of one city . . . . " (Herman, The Appropriate Bargaining Unit, p. 111.)

[15] Canada Safeway Ltd. (Medicine Hat) v Retail Clerks #397 [1971] , ABIR, LR-2280-C-5.

[16] O.K. Economy Stores (Medicine Hat) v Retail Clerks #397 [1971] , ABIR, LR-2280-O-1.

[17] Ibid., letter from G.H. Whitter to G. Gough, 15 July 1971.

[18] Ibid., letter from G. Gough to G.H. Whitter, 26 July 1971.

[19] Tamblyn Western Ltd. v Retail Clerks #397 [1975], ABIR, LR-2280-T-3.

[20] Ibid., letter from W. Canning to R. Shaw, 24 April 1975. The inclusion of those below the level of store manager in bargaining units is not completely rigid Board policy. At Pay 'n Save Drugs the Board excluded camera department managers, assistant store managers and food service managers (Pay 'n Save Drugs v Retail Clerks #397 [1973], ABIR, LR-2280-P-2).

At a Safeway store in Fort McMurray the Board excluded the assistant manager at the request of the employer (Canada Safeway Ltd. v Retail Clerks #401 [1975] ABIR, LR-1026-C-1). After a lengthy debate the Board also excluded the assistant manager in the Revelstoke Companies case, though the floor covering manager, hardware manager, warehouse and yard foreman and credit manager were all included in the unit. This case sparked the following interesting observation by the employer on the role of the power to hire and fire in managerial determinations:

"In terms of the hiring and firing power, recognition should be given to the usual corporate hierarchy that in few instances are decisions ever made without consultation with respect to persons higher up in the organization.

Because most of the decisions involving hiring and firing are not ones involving on-the-spot, split second decisions, consultation is used within the organization. This does not mean, however, that the Manager and Foreman involved have no managerial authority (Revelstoke Companies Ltd. v Retail Clerks #397 [1974], ABIR, LR-2280-R-5).

[21] Redcliff Foods (Horne & Pitfield Ltd.) v Butchers #373 [1971], ABIR, LR-1700-R-4.

[22] Ibid., letter from R.J.F. Garland to G. Gough, 8 February [1971].

[23] Ibid., letter from R.J.F. Garland to G. Gough, 9 March 1971.

[24] This statement is only partially correct. The Board excludes those with the "right to hire and fire and those employed in a confidential capacity with respect to labour relations." Whether this includes the department manager is no doubt dependent on the situation at hand (Mayfair Foods Ltd. v Retail Clerks #401 [1971], ABIR, LR-1026-M-6; St. Paul Co-Op v Bakery Workers #276 [1971], ABIR, LR-202-S-1; Ferraro's Ltd. v Retail Clerks #397 [1975], ABIR, LR-2280-F-4; National Baking System v Retail Clerks #401 [1972], ABIR, LR-1026-N-4).

[25] O.K. Economy Stores Ltd. v Retail Clerks #373 [1972], ABIR, LR-2280-O-1.

[26] Dominion Stores Ltd. v Retail, Wholesale Union [1976], OLRBR.

[27] Ibid., p. 445.

[28] Pharmacists are the only other group that the Alberta Board saw fit to consistently exclude from all employee multi-location units

(Baydala Drugs v Edmonton District Employee Pharmacists Association [1968], ABIR, LR-1958-B-2; Cunningham Drug Stores Ltd. v Retail Clerks #401 [1971], ABIR, LR-1026-C-15; Tamblyn Western Ltd. v Retail Clerks #397 [1975], ABIR, LR-2280-T-3; Alberta National Drugs Ltd. v Retail, Wholesale Union #980 [1968], ABIR, LR-2408; Alberta National Drugs Ltd. v Driver Salesmen #987 [1975], ABIR, LR-70-A-7), and there is considerable doubt about their employee status anyway, many of them being involved in managerial functions. The all-employee units, when certified, include a general managerial exemption (Fruit Huts of Canada v Retail Clerks #397 [1975], ABIR, LR-2280-F-2). B.C. units do not refer to pharmacists, merely all employees and in Ontario recently, an attempt to organize a unit of pharmacists in a retail chain into their own unit, since they were not included in any other unit, failed to a great extent. The majority of those the applicant sought to represent were ruled managerial personnel (G. Tamblyn Ltd. v Retail Clerks [1975], OLRBR).

Tradesmen involved in appliance repair have succeeded in gaining separate units where the employer's structure allowed them to be identified as a distinct group (John Inglis Company Ltd. v Electrical Workers #254 [1968], ABIR, LR-2045-I-2; R.C.A. Limited v Electrical Workers #254 [1975], ABIR, LR-294-R-6), but separate recognition was not always granted (Simpson's Sears Ltd. v Electrical Workers #254 [1975], ABIR, LR-294-S-4; Canadian General Electric v Electrical Workers #254 [1972], ABIR, LR-2045-C-13).

[29] Redcliff Foods v Butchers #373 [1971], ABIR, LR-1700-R-4; Canada Safeway Ltd. (Medicine Hat) v Butchers #373 [1971], ABIR, LR-1700-C-7; Advance Foods Ltd. v Butchers #312 [1974], ABIR, LR-1038-A-3). On occasion the retail outlet only sells meat in which case the meat department unit is really an all-employee unit (F.G. Bradley Co. Ltd. v Butchers #312 [1973], ABIR, LR-1038-B-2; Queen City Meat Market v Butchers #312 [1974], ABIR, LR-1038-Q-1). The meat department is usually specifically excluded from all-employee units like those sought by the Retail Clerks Union (Canada Safeway Ltd. (Camrose) v Retail Clerks #401 [1971], ABIR, LR-1026-C-13; Canada Safeway Ltd. (Medicine Hat) v Retail Clerks #397 [1971], ABIR, LR-2280-C-5; O.K. Economy Stores (Medicine Hat) v Retail Clerks #397 [1972], ABIR, LR-2280-O-1; Canada Safeway Ltd. (Fort McMurray) v Retail Clerks #401 [1975], ABIR, LR-1026-C-1; Swan City Food Ltd. v Retail Clerks #401 [1976], ABIR, LR-1026-S-8), but if those in the department desire it, they may also be included in the unit (Super Save Foods Ltd. v Retail, Wholesale Union #975 [1973], ABIR, LR-2491-S-1; Canada Safeway Ltd. (Lloydminster) v Retail Clerks #401 [1975], ABIR, LR-1026-C-1).

[30] The Alberta Board does certify units made up of only bakery workers (St. Paul Co-Op v Bakery Workers #276 [1971], ABIR, LR-202-S-1; Ferraro's Limited v Retail Clerks #397 [1975], ABIR, LR-1026-F-2; Alberta Bakery v Bakery Workers #276 [1973], ABIR, LR-202-A-1), but it has also rejected such proposals (Mayfair Foods Ltd. v Retail Clerks #401 [1971], ABIR, LR-1026-M-6; Wetaskiwin Foods Ltd. v Retail Clerks #397 [1971], ABIR, LR-1700-W-1).

Separate units of meat department and bakery department personnel are certified in British Columbia (Londom Holdings Ltd. v

Butcher Workmen #212 1968 , BCDOLSOA; Kelly Douglas and Company Ltd. (Super-Value Stores) v Butcher Workmen #212 [1966], BCDOLSOA), but, according to Sack and Levinson, the practise is not followed in Ontario:

"It is the practise of the Board to include the employees in all of the retail food stores of the owner in a municipality in the bargaining unit" (Ontario Board Practise, p. 77).

Examples of the Ontario-type units can be found in the following cases: Food and Allied Workers #175 v M. Loeb [1972], OLRBMR; National Council of Canadian Labour v Sunnybrook Food Market [1972], OLRBMR; Retail, Wholesale Union v National Grocers Company [1973], OLRBMR.

[31] The question has appeared in British Columbia in the case of Woodward Stores (Vancouver) Limited. In this particular case the B.C. Board was faced with a request for a unit of graphic arts workers in the advertising department of one location in the chain operation. The employer fought the proposed unit vigorously, pointing out that it would comprise only eighteen people out of the twenty eight hundred at that particular location, and that the potential for unit fragmentation If such a precedent were set was absolutely staggering. The Board acknowledged the employers concern over fragmentation, but certified the unit anyway, justifying the decision on the premise that collective bargaining had to gain a foothold in the industry somehow, and fragmentary units, though contrary to usual Board policy, did seem to be the only way to facilitate such bargaining:

"A variety of explanations have been given for this experience, ranging from the traditional unwillingness of white collar office or sales staff to join unions to the high percentage of part-time or temporary employees among whom it is difficult to sustain a union majority. Whatever be the reasons for it, it remains a fact that if the Board were to focus on the long range enquiry of how collective bargaining should be carried on in the department store industry, it will likely achieve the short-run result that collective bargaining will not be conducted at all." (Woodward Stores Vancouver Limited v Graphic Arts International Union #210 [1974], CLRBR, 118.)

[32] Dynatrade Canada Limited v Retail Clerks #401 [1973], ABIR, LR-1026-D-5.

[33] Scott National Company Ltd. v Retail Clerks #401 [1969], ABIR, LR-1026-S-3; Sheely Bros. Ltd. v Retail Clerks #401 [1971], ABIR, LR-1026-S-5; Horne and Pitfield Foods Ltd. v Retail Clerks #401 [1968], ABIR, LR-1026-H-2; Old Dutch Foods Ltd. v Butchers #373 [1971], ABIR, LR-1700-O-1; Interprovincial Freezers Ltd. v Retail Clerks #401 [1973], ABIR, LR-1026-T-5; MacDonald's Consolidated Ltd. v Driver Salesmen #987 [1974], ABIR, LR-70-M-4; Alberta National Drug Company v Driver Salesmen #987 [1976], ABIR, LR-70-A-7.

[34] Centennial Packers Ltd. v Butchers #373 [1968], ABIR, LR-1700-C-2. The only exception to the rule regarding area-wide certifications appears to be McDonald's Consolidated Ltd., and here the exception is not that consistent. In Camrose and Grande Prairie the office unit refers to the greater metropolitan area, as in the cases involving purely retail operations, but in Edmonton and area specific addresses are

included. Though there is no documentry evidence to indicate any reason for this inconsistency, the writer suspects that the very small number of such workers at any location in these smaller centers makes it necessary, to maintain unit viability, to use the area-wide unit. The Ontario practise is summarized by Sack and Levinson:

"Furthermore, unless an employer does business at more than one place in a certain municipality, the Board usually certifies for the municipality . . . Where an employer does business at more than one place of business or plant within a municipality, the Board's policy is is to certify for each place of business or plant unless the operations are integrated and the employees share a community of interest." (Sack and Levinson, p. 62).

The standard unit in British Columbia provides for employees at a specified location (McDonald's Consolidated Ltd. v Retail, Wholesale Union #583 [1967], BCDOLSOA; McDonald's Consolidated Ltd. v Office and Technical Employees Union #15 [1968], BCDOLSOA.)

[35] G.W. Reed, Q.C., White Collar Bargaining Units under the Ontario Labour Relations Act, (Kingston, Ontario, Queen's University, 1969), p. 8.

[36] In British Columbia the plant unit excluded office and clerical workers, and the office unit includes "office, clerical and technical" employees, the line between the two is apparently left up to the parties.

[37] Purity Dairy v Cannery Workers #987 [1969], ABIR, LR-70-P-3; Horne and Pitfield Foods Ltd. v Retail Clerks #401 [1969], ABIR, LR-H- ; McDonald's Consolidated Ltd. v Retail Clerks #401 [1971], ABIR, LR-1026-M-19; Sheely Bros. Ltd. v Retail Clerks #410 [1971], ABIR, LR-1026-S-5; Silverwood Dairies Ltd. v Butchers #P280 [1971], ABIR, LR-72-S-2; Alberta National Drugs v Retail, Wholesale Union #980 [1968], ABIR, LR-2408; The Polar Employees Association v Polar Beverages Ltd. [1970], ABIR, LR-70; Swan Beverages Ltd. v Butchers #P280 [1973], ABIR, LR-72-S-3; Kerr Meat Packers v Food and Allied Workers #P421 [1974], ABIR, LR-352-K-1; Central Alberta Dairy Pool v Dairy Employees and Driver Salesmen [1975], ABIR, LR-24-C-2.

[38] Purity Co-Op v Butchers #P319 [1970], ABIR, LR-418-P-2, letter from R.B. d'Esterre to J. Rohaly, 11 September 1970.

[39] Weston Bakeries Ltd. v Retail, Wholesale Union #980 [1969], ABIR, LR-2070-W-1; Canadian Linen Supply Company Ltd. v Cannery Workers #987 [1969], ABIR, LR-70-C-1; Rosedale Linnen Supply Ltd. v Cannery Workers #987 [1973], ABIR, LR-70-R-5; McGavin Toastmaster Ltd. v Retail, Wholesale Union #980 [1968], ABIR, LR-2070-M-1; Medicine Hat Beverage Company v Cannery Workers #987 [1971], ABIR, LR-70-M-13.

[40] Consolidated Fastfrate Ltd. v Teamsters #362 [1976], ABIR, LR-1412-C-11; Centennial Packers Ltd. v Butchers #373 [1968], ABIR, LR-1700-C-2; Polar Beverages Ltd. v The Polar Employees Association [1971], ABIR, LR-39; Old Dutch Foods Ltd. v Butchers #373 [1971], ABIR, LR-1700-O-1. In a recent case the Ontario Board found that there was

sufficient "functional coherence" between non-selling drivers and warehouse workers to justify their inclusion in a single bargaining unit. (Leon's Furniture Ltd. v Retail Clerks #406 [1976], OLRBR). Both the Ontario and British Columbia Boards recognize the separate community of interest held by driver-salesmen and certify units made up of these workers. (Canadian Food Products Sales Ltd. v Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees #647 [1973], OLRBMR; General Bakeries Ltd. v Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees #657 [1974], OLRBMR; Nu-Crest Cleaners Ltd. v Miscellaneous Workers, Wholesale and Retail Delivery Drivers and Helpers Union #351 [1966], BCDOLSOA; Crystal Spring Beverages Ltd. v Miscellaneous Workers, Wholesale and Retail Delivery Drivers and Helpers Union #351 [1974], BCDOLSOA).

[41] A possible problem with distinguishing clearly between wholesale and retail outlets, and thus in deciding upon the proper bargaining structure, may be foreshadowed in the following comment made by an executive of Horne and Pitfield Foods Ltd:

"While I agree that it is difficult for a trade union certified in a retail operation to claim jurisdiction on a wholesale operation or vice versa, I would like to be absolutely sure that this would not be possible. With the advent of discount stores, cash and carry and similar discount operations nowadays, the dividing line between what is retail and what is wholesale is becoming more and more vague." (Horne and Pitfield Foods Ltd. v Retail Clerks #401 [1974], ABIR, LR-1026-H-2, letter from R.J.F. Garland to R. Brunsdon, 30 August 1974).

[42] Fergusen Supply Ltd. v Fergusen Supply Council of Employees [1969], ABIR, LR-877; Union Tractor Ltd. v Union Tractor Employees Union [1969], ABIR, LR-1793; King Chrysler-Dodge Ltd. v Machinists #1722 [1972], ABIR, LR-2270-K-1; Globe Equipment Sales and Rentals v Machinists #1722 [1967], ABIR, LR-2270-G-2; R. Angus Tire Services Ltd. v R. Angus Employees Association [1976], ABIR, LR-2027-A-1.

[43] Cummins Diesel Power Ltd. v Machinists #1722 [1967], ABIR, LR-2270-C-2.

[44] Western Mack Truck Ltd. v Machinists #1722 [1970], ABIR, LR-2270-W-1.

[45] Enerson Motors Ltd. v Machinists #1722 [1972], ABIR, LR-2270-E-1, Reasons for Decision issued by the Board.

[46] Marshall Auto Wreckers v Teamsters #362 [1974], ABIR, LR-1412-M-6.

[47] Fergusen Supply Ltd. v Fergusen Supply Council of Employees [1968], ABIR, LR-877.

[48] Ibid., Board Reasons for Decision of 30 September 1968.

[49] Union Tractor Ltd. v Union Tractor Employees Union [1969], ABIR, LR-1793.

[50] Ibid., letter from W.S. Ross to the Board, 12 February 1970.

[51] R. Angus Tire Services Ltd. v R. Angus Employees Association [1972], ABIR, LR-2027-A-1.

[52] McCoy Bros. Ltd. v Steelworkers #5885 [1971], ABIR, LR-576-M-1 and LR-2251 (Employees Association).

[53] Sheraton-Summit Hotels Ltd. v Beverage Dispensers International Union #265 [1967], ABIR, LR-186-S-5.

[54] King Edward Hotel v Beverage Dispensers #265 [1971], ABIR, LR-22-K-2.

[55] Blackfoot Inn v Beverage Dispensers #265 [1975], ABIR, LR-186-B-5.

[56] Ibid., letter from W. Canning to J. Hanson, 7 April 1975.

[57] Atlific Inns (Alberta) Ltd. v Bartender's #47 [1976], ABIR, LR-2493-A-1. Units encompassing all those related to food and other services had been used in purely restaurant situations. (Zumberger Restaurant v Retail Clerks #401 [1971], ABIR, LR-1026-Z-1; Cara Operations (Alberta) Ltd. v Hotel and Restaurant Employees #282 [1971], ABIR, LR-136-C-6).

[58] Seaway Hotels (Ontario) Ltd. v International Beverage Dispensers and Bartenders Union #280 [1976], OIRBR.

[59] Ibid., p. 100.

[60] The writer acknowledges that his lack of familiarity with Ontario liquor licensing laws may prejudice this comparison between the two jurisdictions but the fact that the Ontario Board had to resort to "outside" help in order to find out what the real purpose of those employed was suggests that the actual differences were not that great. The Board continued this policy later the same year, with the same employer, when it carved out a "craft" unit of bartenders from a dining room situation. (Seaway Hotels Ontario Ltd. v International Beverage Dispensers and Bartenders Union #280 [1976], OLRBR). In British Columbia those working in the "public house" or tavern are separated from the all-employee unit that usually covers the rest of the establishment. (Barclay Motor Hotel Ltd. v Beverage Dispensers and Culinery Workers #835 [1967], BCDOLSOA; Red Lion Motor Inn Ltd. v Restaurant Employees and Bartenders International Union #513 [1966], BCDOLSOA; Blue Boy Motor Hotel Ltd. v Beverage Dispensers and Culinery Workers Union #676 [1970], BCDOLSOA).

[61] Banff Springs Hotel (Canadian Pacific Hotels Ltd.) v Railway Workers #325 [1972], ABIR, LR-326-B-1.

[62] Ibid., letter from G. Gough to H.L. Critchley.

[63] Ibid., letter from G. Gough to H.L. Critchley, 14 July 1972.

[64] Chateau Lake Louise (Canadian Pacific Hotels Ltd.) v Railway Workers #325 [1976], ABIP, LR-326-C-2.

[65] Hotel MacDonald v Operating Engineers #955 [1975], ABIR, LR-955.

Chapter 6

MUNICIPAL GOVERNMENTS AND SCHOOL BOARDS

THE NATURE OF THE SECTOR

Cities, towns, municipal districts and school boards and districts occupy a rather unique position in Canadian industrial relations. They are clearly well within the bounds of what is commonly labelled the "public sector", yet they also fall within the limits of labour legislation that is usually applied to the private sector, as was outlined by T.J. Plunkett:

> Within their respective jurisdictions the federal and provincial governments have a responsibility in the field of labour relations and to this end have developed legislation setting out the conditions under which all other employers and employees organizations are governed in terms of their collective bargaining relationship. In the case of municipal governments, it is the provincial labour relations legislation governing collective bargaining in the private sector that generally is applicable to municipalities as employers and to unions and associations of employees in the municipal services.[1]

Municipal employees, with the exception of policemen and firemen, fall under the jurisdiction of provincial labour relations boards,[2] and it is these boards that must deal with the problems associated with attempting to apply legislation designed for the private sector to a public sector situation. H.W. Arthurs felt that the application of the private sector legislation had not caused any particularly difficult problems:

> Perhaps the most impressive fact about Canadian municipal labor relations is that the system operates in a reasonably "normal" fashion. In that sense it hardly presents as interesting a picture as other areas of public employment, which are characterized by more novel statutory arrangements.[3]

For one in search of elaborate and complicated schemes providing for, at least in theory, the smooth operation of public sector collective bargaining the municipal level scene may not provide anything of interest, but Mr. Arthur's emphasis on the word "normal" is worthy of attention. Normal relations are not necessarily trouble-free relations, and as the reader is no doubt aware, an area that is certainly normal, yet hardly trouble-free, is that of bargaining unit determination. It is not unreasonable to expect, then, that in the "normal" world of municipal industrial relations there would exist at least a few "normal" bargaining unit difficulties. An examination of the Alberta data reveals that certain problems found on occasion in the private sector have indeed appeared at the municipal government level.

CITIES, TOWNS AND MUNICIPALITIES

The Managerial Question

It has already been pointed out in this study that the identification of those performing managerial functions in the white-collar situation is fraught with difficulties. The growth in the number of individuals performing "reporting" or "conduit" functions, coupled with the rising number of professionals and the more subtle methods of exercising authority in such a setting produce a situation in which it is often very difficult to clearly delineate managerial employees. Smith, Edwards and Clark also observed the following as complicating the question still further in the public sector:

> . . . most of us here would admit that supervisors in public employment are for the most part different than supervisors in the private sector, not only in the concept of employer loyalty, but also in the performance of identifiable supervisory

> functions. Under a civil service system, the authority supervisors might have with regard to the hire, transfer, suspension, layoff, recall and promotion is subject to more stringent review than in private employment. Further, in civil service, employees performing normal supervisory duties have the same rights, and protections as do rank and file employees with respect to tenure, job security and civil service grievance procedures, and normally their salary increments and increases have a distinct relationship to increments and increases granted to non-supervisory personnel. These factors tend to create a community of interest with employees supervised rather than with management.[4]

The Alberta Board presided over a number of cases that were complicated because of the inability of the parties to the application to agree upon who was to be excluded on the grounds of managerial functions. In the case of the Town of Brooks[5] the dispute was not confined to the office portion of the municipal structure, but rather to the shop and outside workers. The shop foreman, the water and sewer foreman, and the parks and cemetary foreman were, according to the employer, clearly managerial personnel; the union did not agree. All three individuals supervised small numbers of employees, with the number decreasing considerably during the winter months. Each occasionally worked with the tools used by those they supervised, and each had the power to recommend hiring and firing, though they did not have the power to take such actions unilaterally. There was no evidence that any of those in question were regularly involved in confidential matters relating to labour relations. The Board ruled that all three positions did not involve duties of a nature that would warrant exemption from collective bargaining. At the City of Lethbridge[6] a dispute arose over the status of several employees including Streets and Roads Technician, Chief Draftsman, Plumbing Inspector, Utility Supervisor, Deputy City Assessor, Payroll Clerk and secretaries to several senior administrators. The Board refused to exclude the majority of those involved, noting that only those who were clearly employed in a confidential or managerial position would be exempted.[7]

In the case of Lethbridge Northern Irrigation District[8] a controversy arose over the status of the Watermaster. The employer claimed that those holding the position should be excluded on managerial grounds because they were totally responsible for those they supervised, they had the authority to hire and fire, they had a confidential relationship with management with respect to those they supervised, and they were completely responsible for the main canal and all its subsidiaries within the district. The Board agreed with the employer and excluded the watermaster position from the certified unit.

At County of Forty Mile #8[9] a dispute arose over the status of the purchasing manager and accountant and payroll clerk. The purchasing manager prepared the municipal budget and was responsible for the purchase of all materials, equipment and land, though his authority with regard to other employees was unclear. The accountant and the payroll clerk were responsible for supposedly confidential payroll matters. The Board excluded the purchasing manager but declined to do the same for the other two positions. A short time later another dispute arose, this time with respect to the utility officer. The following enquiry from the Board indicates the position taken when investigating such matters:

> For example, does this person manage anyone? Has he the right to hire and fire? Has he ever exercised the right to hire and fire? Has this individual the right to suspend, discipline, promote, demote, or transfer employees? Can this individual grant time off and leave of absence, or change wage rates of subordinates? Does this individual partake in policy making decisions, train staff, schedule and assign work? Also what privileges and responsibilities are granted to this individual which are not granted to rank and

> file employees under his jurisdiction?[10]

The employer's reply to this enquiry was to provide the Board with a copy of the letter that accompanied the funds used to finance the position in question, the essence of which was that the utility officer was to be regarded as a managerial position:

> You will appreciate that the $15000.00 annual grant towards the costs of a utility officer in your county assumes that the utility officer will operate in a managerial role.
>
> As the training by my department stressed, his function is to co-ordinate activities of the gas co-operatives with the county, including funding, easements and standards of construction. He is also to assist in the solution of REA problems and to advise the county in regard to other utilities such as water and sewer.
>
> His function is purely managerial and he is neither an inspector nor a tradesman.[11]

The Board held a hearing to resolve the matter and issued the following decision thereafter:

> However, for the purposes of the Alberta Labour Act, 1973 the Board determined that the Utilities Officer did not have managerial functions relative to the operations of the County of Forty Mile. The Board considered that this position was more that of a consultant and could not, in the course of its determinations, identify managerial functions of the employee relative to the employer.[12]

The Board was obviously more concerned with the actual situation with regard to the utilities officer, than with what the theoretical job functions were. The investigation revealed that the utilities officer was, as much as anything else, a foreman in charge of gas line installations, and, like most other municipal foremen, he was included in the bargaining unit.[13]

Two points are worthy of note regarding the managerial problem in the municipal context. The concerns voiced with regard to the status of the office-oriented supervisory personnel do not appear to be warranted in the Alberta situation. The majority of the problems have arisen with regard to those supervisors oriented towards "outside" work, rather than to office work. Secondly, the concern of the Alberta Board, as outlined in the County of Forty Mile case, is primarily centered on the relationship of those in question with those they supervise. The ability of these individuals to materially affect the employment status of those they supervise appears to dictate their bargaining status, and more often than not, their power is apparently not extensive enough to justify such action.

The approach of the Alberta Board appears to closely parallel that of the BCLRB, as expressed in the District of Burnaby[14] case. In that particular instance the Board refused to exclude a group of workers on the grounds of managerial functions because their duties, among other lesser considerations, did not involve "the exercise of management functions over other employees".[15]

The Appropriate Bargaining Structure

In his general comments regarding bargaining structure T.J. Plunkett made the following observations on the bargaining units most commonly found in the municipal setting:

> For most municipal governments of any size four principal bargaining units have evolved. These are summarized as follows:
>
> (1) 'Outside' employees:
>
> This unit generally includes all employees engaged in maintenance and operational activities relative to municipal services and facilities, e.g. water and sewerage services, road and street maintenance, refuse collection and disposal, maintenance of parks, recreational facilities and public buildings;
>
> (2) 'Inside' employees:
>
> Employees engaged in clerical, accounting and stenographic duties usually are included in this unit. Also included, in many instances, are employees engaged in technical duties relative to engineering, building inspection, property valuation, etc;
>
> (3) Firefighters:
>
> Employees engaged in firefighting duties;
>
> (4) Police:
>
> Members of a municipal police force. Unit may also include employees under jurisdiction of police department who are not members of the police force but are engaged in technical or

> clerical duties.[16]

Mr. Plunkett qualified his generalizations regarding municipal bargaining structure by stating that:

> While the foregoing are the most prevalent bargaining units in the municipal public service these do not necessarily constitute an all-inclusive list. Depending on the range of its responsibilities and the relationship of other local bodies to it, some municipal corporations have to deal with a variety of additional bargaining units.[17]

A "variety" of units have received Board sanction in Alberta, although the policy of the Board appears to be to, wherever possible, at least separate inside and outside workers. In the City of Lethbridge case the Board, in certifying a fairly comprehensive unit, added the proviso that the unit most assuredly did not include both inside and outside workers:

> It was the decision of the Board that it was not prepared to issue one certificate encompassing all of the employees as it is a firm policy of this Board, as well as others across Canada, that a unit comprising both office employees and outside employees is not appropriate for collective bargaining.[18]

Whenever the opportunity presents itself it appears the Alberta Board will limit the unit fragmentation to a simple split between inside and outside workers. At the County of Lethbridge[19] the Board created units of outside employees and inside office workers despite the employer's protest that the office unit was too small to be viable, and at the Town of Whitecourt[20] and the Town of Hinton[21] the Board also sanctioned units of outside employees. In the latter case considerable difficulty arose with respect to the outside workers. The employer protested vigorously against the proposed inclusion of workers performing duties under "contract".

> We take exception to including any employees performing duties under contract to be included in any collective bargaining unit. The Town of Hinton periodically and for relatively short periods

> of time does engage independant equipment owners to do work such as snow removal, sanding, earth moving, construction etc. The Town of Hinton has absolutely no control over the employees of these independant employers and we would deem it most unjust to impose upon unknown employers, in unknown situations, at unknown times, and for unknown durations any restrictions on the employer's relations with his employees. To include this request with any bargaining unit we consider most unjust, and we are requesting that this board not include consideration of these contractors employees in the scope of any bargaining unit that would be directly related to the Town of Hinton and its relation as an employer to direct outside employees of the Town of Hinton.[22]

With this eloquent plea the Town succeeded in getting the specific reference to "contract" employees deleted from the unit description. The Town also tried to get outside workers employed under federal work programs (LIP and STEP) excluded from the unit, but the Board refused to do so, noting that such personnel were employees within the meaning of the Labour Act, and as such were eligible for inclusion in the "outside" unit.

The Board does, however, recognize divisions other than simply inside and outside workers. At the City of Medicine Hat,[23] the City of Edmonton,[24] and the Town of Ponoka[25] the Board recognized units of workers specifically involved in the production and distribution of electricity, while at the City of Calgary[26] the Board recognized a unit of ambulance drivers and attendants, and again at the City of Medicine Hat,[27] a unit of transit system drivers. In the City of Edmonton the Board has also recognized a unit specific to the Board of Health,[28] and another specific to several departments within the overall city bureaucracy.[29] At the County of Vulcan[30] the Board created an all-employee unit, excluding only teachers and those employed in a managerial or confidential capacity, and at the Town of Wainwright[31] another all-employee unit was created, excluding only the Recreation Director, the Work Superintendant and the Town

Administrator.

The policy of the Alberta Board regarding the acceptable bargaining structure in the municipal setting appears to be a rather feasible one.[32] The standard separation of inside and outside workers is recognized as appropriate, but in cases involving complex municipal structures or peculiar circumstances, and when such circumstances are pointed out by one or more parties to the decision, the Board appears to be quite willing to accommodate the desires of the parties.

BOARDS OF EDUCATION

The Appropriate Bargaining Structure

Although teachers have established themselves as a clearly discernable group of employees within the structure of the modern educational complex, to whom separate bargaining status should be granted by virtue of professional training and orientation, there is still some doubt regarding the appropriate bargaining unit configuration for the other employees involved in the efficient operation of the educational establishment. This comment on the Ontario practise, from Sack and Levinson, is illustrative:

> The Board has not decided between the usual white-collar unit of 'office, clerical and technical' employees on the one hand or 'office and clerical' employees and 'technical' employees on the other. With respect to the maintenance employees the practise has been, since 1967, to certify a unit of 'all employees employed in maintenance, services and plant operations'. This unit includes such classifications as janitors, caretakers, custodians, bus drivers, and cafeteria help, and excludes professional teaching staff, audiovisual technicians, teachers' assistants and other semi-professional teaching staff. The description of the bargaining unit ordinarily covers the whole geographic area over which the board of education has jurisdiction.[33]

The Alberta Board does not appear to have made any attempt to bind itself to a standard bargaining structure for school-related non-teaching personnel. With regard to office staff, the Board policy seems quite flexible. At Red Deer College[34] the Board certified a unit of office personnel excluding the confidential secretaries of two senior administrative officers and casual part-time workers, while at Jasper School District #3063[35] the Board certified a clerical unit that specifically included casual and part-time workers in the clerical unit. At the Pincher Creek School Division[36] the Board certified a clerical unit that specifically excluded those performing the quasi-teaching functions of a school aide, while at Lethbridge Catholic Separate School District[37] the Board specifically included school aides in the clerical unit. The office or clerical unit is also not necessarily separated from other personnel. At the Grande Prairie School District[38] an all-employee unit excluding only senior administrative personnel and technicians in training was deemed appropriate. A similar unit grouping maintenance and office staff was also approved at Ft. McMurray School District.[39]

Where all-employee units are not certified the Board does certify units specific to those employees performing maintenance services,[40] but it does not appear that the Board is receptive to suggestions that this unit be subdivided. At School District #19[41] the Board rejected a proposed unit of those involved in roofing work because of "the flow of the employees affected into work other than roofing during a considerable part of the working time",[42] and at Calgary Separate School District[43] the Board rejected an attempt to create a unit of warehouse employees and truck drivers on the grounds that the unit overlapped with the maintenance unit. At the Red Deer Public School District[44] the Board refused to sanction the employer's proposal that the "maintenance" employees and "caretakers" be placed in separate units.

When it does create maintenance oriented units the Board's policy appears to parallel that followed in the case of hospital support units. Such maintenance groups do have possible trade divisions in their ranks, and there is a variety of functions performed by those in the group, but the fragmentation that would result from recognition of such differences is clearly unacceptable to the Board. The situation with regard to office personnel is not nearly so clear. The Board appears open to suggestions that, given local circumstances, such personnel be treated as a separate unit or that the group be combined with other personnel to form a more comprehensive unit.

A group of school board employees that, in seeking separate bargaining rights, caused some difficulty for the Alberta Board were school bus drivers.[45] The problem does not appear to have been whether the group should be granted a separate bargaining unit when they requested same, but rather in establishing whether or not an employer-employee relationship existed between members of the proposed unit and the alleged employer. At the High Prairie School Division[46] the Board certified a unit of "full-time school bus drivers". The employer later enquired as to whether the rather general unit applied to drivers who drove buses they owned themselves. The Board replied that it did not. In the case of County of Warner[47] the Board certified a unit of "regular school bus drivers" over employer protests that the working conditions of those in the unit were such that including all the drivers in a single unit was not conducive to sound collective bargaining,[48] each driver faced a rather unique situation and should be compensated in accordance with his particular position. At the Westlock School Division[49] the Board had to alter the unit of bus drivers to allow for the existence of "contract" drivers. The Board reasoned that such workers were not employees as contemplated by the Act, and thus they could not be included in the unit. The method of payment and the degree of control exercised by the supposed employer were not in accordance with that usually found in an employer-employee relationship.

The school bus drivers are a recognized unit for much the same reason as the driver-salesmen in the retail industry. They do not work at any single location with any particular group of fellow employees. School Boards have recognized the uniqueness of the driver's situation by providing a quite different form of remuneration, usually through some form of contract. Unfortunately, these special arrangements appear to occasionally impede the desire of the bus drivers to engage in collective bargaining. To do so one must first be an "employee".

The Managerial Problem

The question of managerial exclusions within the educational administrative or support structures does not appear to have been a major problem for the Alberta Board. In most cases the Board excluded, usually with the consent of the parties, senior officials such as school and maintenance superintendants,[50] and the clerical personnel who assist such officials, the former on the grounds of managerial functions and the latter because of normal exposure to confidential information. In maintenance oriented units the maintenance foreman or superintendant was usually left out of the unit,[51] though in cases where the number of men supervised was small (as was the case in many town and city departments) the issue was not always crystal clear. At the Red Deer Public School District[52] the Board included the maintenance foreman in the unit despite the following submission from the employer:

> If his hours of work, his duties, and his salary become items to be negotiated by the maintenance men's unit or by the caretaker's unit, his position as manager of the maintenance department will be seriously eroded by self interest. Because of the control which the bargaining will have over his pay and his conditions of work he will find it to his personal advantage to place the interests of the bargaining unit before those of the school board. Placing him in the bargaining unit will force the school board to transfer the managerial functions of his office to someone outside the bargaining unit, and thereby will lead to additional expense to the School Board by providing managerial services to a small group of 4 or 5 men.

The Board had only a few difficulties regarding managerial exclusions in the clerical staff unit. At Calgary School District #19[53] the Board had to resolve a dispute over the status of the Supervisor of Systems and Programming, whose duties were to design and manage the work flow of his department, conduct studies in new ways to apply data processing techniques, modify existing computer arrangements to new demands and supervise the activity of a group of systems analysts. In this particular case the Board saw fit to grant the exclusion, as it did at Red Deer College,[54] where computer-related personnel were also excluded.

There is no "air-tight", easily summarized Board policy with respect to the municipal and educational portions of the public sector. The Board did indeed handle "normal" problems relating to managerial exclusions and proper overall bargaining structure, but the Board's reaction to such "normal" problems was ordinary only by way of its flexibility rather than its predictability. The Board applied the standard criteria in the managerial cases, sometimes producing exclusions and sometimes not. The Board apparently sought to enforce the normal division of inside and outside workers and blue-collar and white-collar workers, but where the desires of the parties or the situation at hand dictated a more imaginative response, the Board appeared willing to comply, the only limit being the Board's distaste for excessive fragmentation. Where conditions supported a move toward more inclusive units, the move was usually made, but in cases where a more complex municipal structure existed, non-fragmentary units based on departmental divisions were also deemed appropriate.

To make more restrictive observations, given the evidence, would surely contradict an earlier commitment to avoid data manipulation in the interests of preconceived notions.

FOOTNOTES

Municipal Governments and School Boards

[1] T.J. Plunkett, "Municipal Collective Bargaining," Collective Bargaining in the Public Service, (The Institute of Public Administration of Canada Toronto, 1973), p. 2.

[2] In Alberta the Firefighters and Policemen Labour Relations Act governs the industrial relations activities of these two groups of employees. Section 2(c) of this act deals specifically with the bargaining units deemed appropriate for these types of employees, with only three variations permissible:

(a) for firefighters, the unit must encompass all of the firefighters employed by a municipality except the chief and the deputy chief;

(b) for policemen, two units are specified, one for those holding the rank of inspector and above, excluding the chief constable and deputy chief constable, and;

(c) the policemen of a municipal police force who hold ranks lower than that of inspector.

[3] H.W. Arthurs, Collective Bargaining by Public Employees in Canada: Five Models (Ann Arbour: Institute of Labor and Industrial Relations, University of Michigan, Wayne State University, 1971), p. 18.

S.J. Frankel and R.C. Pratt felt that municipal governments were distinguishable from the great "public sector" group of employers, and that collective bargaining in the municipal context was aggrevated by these special characteristics:

(a) the very narrow revenue base of this lowest level of the public sector makes it very difficult for the employer to bargain, fiscal flexibility is simply not great enough;

(b) the limited number of programs operated by this level of government eliminates the likelihood of being able to alter or drop programs in the face of rising costs, there is no program flexibility with which to bargain;

(c) elected officials at this level of government have a greated tendency to become involved in the bargaining process;

(d) those involved in the labour relations function at this level appear to have a more limited appreciation of the aims, goals and functions of the collective bargaining process. This situation is worsened by periodic attempts to gain personal political "mileage" from the collective bargaining process (S.J.Frankel and R.C. Pratt, Municipal Labour Relations in Canada Montreal: The Canadian Federation of Mayors and Municipalities and The Industrial Relations Centre, McGill University, 1954).

H.D. Woods also acknowledged that there was minimal freedom of action at the municipal level:

"Municipalities are not sovereign; their powers and authority derive from provincial legislation. They are creatures of the provinces in which they are located. Consequently, municipalities may find that both the form and content of their industrial relationships are largely determined by the legislature which created them. At least the legal framework which establishes the system of rights and obligations of the parties in collective bargaining concerning municiple employment is determined by a provincial legislature" (H.D. Woods, Labour Policy in Canada, Vol. I, Labour Policy and Labour Economics in Canada, Toronto, Macmillan of Canada, 1973), p. 289.

[4] R.A. Smith, H.T. Edwards, and R.T. Clark, Labour Relations Law in the Public Sector (Indianapolis, The Bobbs-Merrill Company Inc., 1974).

[5] Town of Brooks v CUPE #1032 [1967], ABIR, LR-2071-B-1.

[6] City of Lethbridge v CUPE #70 [1969], ABIR, LR-1835-L-3.

[7] Only the City Manager and his secretary were excluded, the former because of managerial duties, the latter on the grounds of confidentiality with respect to labour relations.

[8] Lethbridge Northern Irrigation District v CUPE #70 [1971], ABIR, LR-1835-L-2.

[9] County of Forty Mile #8 v CUPE #70 [1972], ABIR, LR-1835-F-1.

[10] Ibid., letter from R. Brunsdon to R.R. Walliman, 19 October 1974.

[11] Ibid., letter from Mr. R. Farran, Minister of Telephones and Utilities, to the County of Forty Mile #8, 5 November 1974.

[12] Ibid., letter from W. Canning to R.R. Walliman, 23 January 1975.

[13] In the case of the Town of Cardston the Board also refused to exclude foremen from the bargaining unit with this comment:

". . . the Board was of the opinion that the evidence established that the person in this classification is a working leader and carries out duties performed by other employees in the bargaining unit." (Town of Cardston v CUPE #70 [1973], ABIR, LR-1256). The Board also did not sanction the proposed exclusion of foremen in the Town of Wainwright case, where only the general foreman was excluded, (Town of Wainwright v CUPE #1606 [1974], ABIR, LR-200-W-2) and in the Town of Ponoka case, where foremen were not specifically excluded. In the latter case the Board chose to add a general exclusion for those involved in managerial and confidential functions (Town of Ponoka v Electrical Workers #254 [1976], ABIR, LR-294-R-1.)

[14] Corporation of the District of Burnaby v CUPE #23 [1974], CLRBR. The absence of any reported cases involving the managerial

question at the municipal level in Ontario suggests that the issue has not, in that Board's opinion at least, been of sufficient interest or magnitude to warrant publication of the cases.

[15] Ibid., p. 9, underlining as in original.

[16] Plunkett, *Municipal Collective Bargaining*, p. 4.

[17] Ibid., p. 4.

[18] City of Lethbridge v CUPE #70 [1969], ABIR, LR-1835-L-3, letter from H.C. French to G.H. Hopman, 31 December 1969.

[19] County of Lethbridge v CUPE #70 [1971], ABIR, LR-1835-L-1.

[20] Town of Whitecourt v CUPE #787 [1974], ABIR, LR-1014.

[21] Town of Hinton v CUPE #1673 [1974], ABIR, LR-2480. In the case of Town of Canmore the Board rejected a unit of outside workers confined to machine operators, truck drivers and labourers because it felt that the unit covered only part of the outside workers (Town of Canmore v CUPE #37 [1972], ABIR, LR-737-C-1).

[22] Ibid., submission from the Town of Hinton to the Board. In the case of the Board of Education for the Borough of Scarborough the Ontario Board was called upon to make a decision regarding the status of "contract" workers who were employed for a specific task over a specific period of time. The Board's position on the matter was clearly in favour of including such personnel in the proposed unit:

"It would appear that they perform work not unlike that performed by the employees who the parties agree are in the bargaining unit. And to this date, the Board has not considered the term of employment a relevant consideration in determining whether an employee should be granted collective bargaining rights or be included in the bargaining unit" (Board of Education for the Borough of Scarborough v Association of Professional Student Services Personnel [1975], OLRBR, 657).

[23] City of Medicine Hat v Electrical Workers #254 [1970], ABIR, LR-2940M-7.

[24] City of Edmonton v Electrical Workers #1007 [1973], ABIR, LR-772-2.

[25] Town of Ponoka v Electrical Workers #254 [1976], ABIR, LR-294-P-1.

[26] City of Calgary v Electrical Workers #254 [1971], ABIR, LR-294-C-15.

[27] City of Medicine Hat v Amalgamated Transit Union #1374 [1970], ABIR, LR

[28] City of Edmonton (Local Board of Health) v CUPE #1845 [1975],

ABIR, LR-2430-E-1.

[29] City of Edmonton v CUPE #52 [1975], ABIR, LR-1388-E-3. In this particular case the Board and the parties involved spent quite a bit of time attempting to create some degree of rationality in the matching of the bargaining units related to departments and the bargaining agents seeking to represent such units.

[30] County of Vulcan #2 v CUPE #37 [1972], ABIR, LR-737-V-1.

[31] Town of Wainwright v CUPE #1606 [1974], ABIR, LR-200-W-2.
The policy in British Columbia would seem to be very similar. Examples can be found of all-employee units, departmental units in large centres, outside workers units, and inside workers units. (Corporation of the City of Vernon v Vernon Civic Employees Union #626 [1966], BCDOLSOA; Town of Merritt v CUPE #900 [1967], BCDOLSOA; Corporation of the Village of Parksville v Nanaimo Civic Employees Union #402 [1967], BCDOLSOA; Corporation of the City of Kelowna v CUPE #338 [1966], BCDOLSOA; Corporation of the District of Burnaby v Burnaby Civic Employees Union #23 [1967], BCDOLSOA; Corporation of the Town of Creston v Civic Workers Union #343 [1967], BCDOLSOA). The Ontario practise is summarized by Sack and Levinson:

"The usual practise is to certify units of outside employees and units of inside employees. However, this practise may be varied according to the agreement of the parties and the state of the union representation" (Sack and Levinson, Ontario Board Practise, p. 77).

[32] The Board also had to be flexible with regard to the identification of the employer in some cases, municipal structures being such that more than one single source of funds may be used to reimburse any given group of employees. In the County of Forty Mile #8 case the Board had to divide up the proposed unit in accordance with the discovery that there were really three employers involved, the "school" committee, the "agricultural" committee and the county itself (County of Forty Mile #8 v CUPE #70 [1972], ABIR, LR-1835-F-1). At the County of Lac Saint Anne the Board found that it was dealing with school committee employees, municipal employees and employees working jointly for both school committee and municipal council (County of Lac Saint Anne v CUPE #1928 [1975], ABIR, LR-2437-L-1).

[33] Sack and Levinson, Ontario Board Practise, p. 77. There does not appear to be any one configuration that is universally suitable to the BCLRB. All-employee units excluding only teachers are deemed appropriate, as are units of all or part of the maintenance staff, office staff, and other support personnel (School District #57 v Operating Engineers #858 [1972], BCDOLSOA; School District #39 v Hotel and Restaurant Employees Union #180 [1973], BCDOLSOA; School District #24 v CUPE #900 [1971], BCDOLSOA; School District #1 v CUPE #343 [1968], BCDOLSOA).

[34] Red Deer College v CUPE #1445 [1972], ABIR, LR-908.

[35] Jasper School District #3063 v CUPE #1458 [1972], ABIR, LR-862-J-1.

[36] Pincher Creek School Division #29 v CUPE #927 [1976], ABIR, LR-726.

[37] Lethbridge Catholic Separate School District #9 v CUPE #1825 [1975], ABIR, LR-416-L-1.

[38] Grande Prairie School District #2357 v Grande Prairie School District Employees Association [1974], ABIR, LR-82.

[39] Ft. McMurray School District #2833 v CUPE #1505 [1975], ABIR, LR-59-F-2. Also at St. Albert Protestant Separate School District #6 (St. Albert Protestant Separate School District #6 v CUPE #1099 [1974], ABIR, LR-60-S-1.)

[40] School District #19 v CUPE #40 and School District #19 Staff Association [1968], ABIR, LR-2030; Drumheller Valley School Division #62 v CUPE #1184 [1969], ABIR, LR-2112; Yellowhead School Division #12 v CUPE #1357 [1971], ABIR, LR-403-Y-1; Banff School District #102 v CUPE #37 [1972], ABIR, LR-737-B-1; Sherwood Park Catholic Separate School Board #105 v CUPE #1961 [1976], ABIR, LR-5-S-1.

[41] School District #19 v CUPE #40 and School District #19 Staff Association [1968], ABIR, LR-2030.

[42] Ibid., Board decision of 1 June 1966.

[43] Calgary Roman Catholic Separate School District v CUPE #520 [1969], ABIR, LR-717-C-1.

[44] Red Deer Public School District #104 v CUPE #1012 [1970], ABIR, LR2473. In this particular instance the employer argued that the two groups had been separated in the past and that the situation "Had not changed and that the maintenance men should be a distinct bargaining unit." The Board apparently felt that the situation had changed.

[45] As Sack and Levinson have pointed out, bus drivers are usually included in the maintenance unit in Ontario. In British Columbia examples can be found were the drivers were granted separate status (School District #35 v CUPE #1260 [1970], BCDOLSOA; School District #24 v CUPE #900 [1971], BCDOLSOA) and where drivers were included in all-employees or maintenance units (Board of School Trustees #57 v Operating Engineers #858 [1969], BCDOLSOA; School District #29 v CUPE #1040 [1967], BCDOLSOA).

[46] High Prairie School Division #48 v CUPE #2057 [1967], ABIR, LR-2057-H-1.

[47] County of Warner #5 v Teamsters #362 [1972], ABIR, LR-1412-W-5.

[48] Ibid., the letter from D.M. Holladay to G. Gough read in part:

". . . driving a school bus is not the principal occupation of those drivers . . . Each bus route is unique because of the residence of the driver, distance driven, number of pupils on bus, size of bus, road conditions and driving time. It is obvious that each contract must be dealt with individually.

We believe that in fairness to the drivers that individual contracts would be the fairest way to come to an agreement. Driving a school bus is a supplement to a regular occupation. Many times during the school year the regular drivers abandon their bus job leaving it up to their wives while they carry on with farming etc. . ."

[49] Westlock School Division #37 v CUPE #1661 [1974], ABIR, LR-2351-W-1. Units of school bus drivers were certified without any apparent dispute over the employer-employee relationship at the Spirit River School Division (Spirit River School Division v CUPE #1824 [1975], ABIR, LR-407-S-1) and the County of Beaver #9 (County of Beaver #9 v County of Beaver Bus Drivers Association [1975], ABIR, LR-657.)

[50] Yellowhead School Division #12 v CUPE #1357 [1971], ABIR, LR-403-Y-1; Wainwright School Division #32 v CUPE #1606 [1973], ABIR, LR-200-W-1; Grande Prairie School District #2357 v Grande Prairie School District Employees Association [1974], ABIR, LR-82; Ft. McMurray School District #2833 v CUPE #1505 [1975], ABIR, LR-59-F-2.

[51] Edmonton Public School District #7 v CUPE #784 [1970], ABIR, LR-624-E-1.

[52] Red Deer Public School District v CUPE #1012 [1970], ABIR, LR-2473-R-1.

[53] Calgary School District #19 v Calgary School District #19 Staff Association [1968], ABIR, LR-2030.

[54] Red Deer College v CUPE #1445 [1972], ABIR, LR-908.

CONCLUSION

SUMMARY

It is worthy of note, I think, that in the work that provided the stimulus for this particular undertaking, namely Herman's bargaining unit study of 1966, there were no provisions for any "conclusions". There were a large number of "observations", usually at the end of a particular chapter, but at no point in the study did Herman attempt to make any decisive "summation" with regard to the data that had been collected. Herman merely stated what positions had been taken by the various Boards with respect to the issue being discussed, and then stated which approach he favoured.

As indicated in the introduction, the approach taken in this work was similar, though not quite as limited, to that used by Mr. Herman. While pointing out that this work would confine itself to the relatively firm ground of impassive observation with respect to the activities of the Alberta Board of Industrial Relations, it was also added that where-ever possible this author would venture onto the rather "thin ice" of delineating trends and policies. The decisions examined in this work do encompass, I think, enough of the activity of the Alberta Board to enable one to make some general remarks, but before doing so, a brief summary of the discernable positions of the Alberta Board is necessary.

The Health Care Industry

The ABIR resolved the question of the appropriate structure for bargaining in the health care industry by creating a framework of five units designed to encompass all the workers likely to be found in even the largest of health care institutions. Workers are placed in any given unit on the basis of their "functional contribution" to the institution. Though the five unit concept meant little for the bargaining structure of support personnel and nurses, it did involve a major policy commitment with respect to paramedical and technical personnel, and it appears there has been no shift since this policy commitment was made. The Board has remained firm it its insistance that proposed units in health care conform to this framework.

The Alberta Board apparently examines the question of managerial status in the health care industry on a case by case basis, with the evidence at hand being determinative. The office staff of the institution is usually placed in the general service unit, with managerial personnel excluded.

The Board does not appear to have any rigid policy commitment to any particular geographic area for health care certifications. Both single location and district-wide units are certified, depending on the circumstances of the case at hand.

The Construction Industry

The rather new problems associated with reconciling the traditional bargaining unit structure of the construction industry with the operations of firms not easily placed in any particular sector of that industry, or in any portion of it at all in some cases, were encountered by the Alberta Board in the form of the craft and shop or all-inclusive unit controversy. There was, however, no clear-cut policy response from the Board in this area. Traditional units, and on occasion less common "broader" units, were certified by the Board, but there was no evidence of any overall policy framework similar to that developed in the health care industry.

When faced with jurisdictional issues, and the apparent emergence of "new" trades the Board appeared reluctant to further fragment the existing bargaining structure, although there was no outright and flat denial in all cases. The special status of groups such as inspection workers and security personnel was recognized by the Board.

Board activity in the field of registration reinforces the above observation. Excessive fragmentation, in terms of trade jurisdiction, geographical scope and employer groupings was not well received as the Board apparently pursued a self-confessed policy of seeking to achieve stability in the industry through the registration mechanism. In situations where the older structure did not coincide with the new, more stable structure envisaged by the Board as part and parcel of the whole scheme of accreditation, the more stable structure was obviously preferred.

As was the case in the health care industry, the status of alleged managerial and supervisory personnel was determined on a case by case basis, the real meaning of the term "foreman" or "supervisor" being particularly hard to standardize in this industry.

The Retail Industry

In this industry the Board appears to endorse, as a general and consistantly enforced policy, two types of unit configurations. In the retail chain situation the unit is to encompass a definable geographical area and all the retail facilities operated by the employer in that area. The unit scope is to be quite broad at any given location, with managerial exclusions apparently rather difficult to obtain in light of the centralized administrative apparatus utilized by such employers.

In the wholesale industry the Board does not grant such all-inclusive geographic units, but rather units that are specific to a particular location, or units that, although geographic in coverage, specify the particular locations to be included. There is no allowance for future "sweep-ins" in this sector. The bargaining structure at each specified location is also more complex, a result of the more diffuse work force found in such undertakings. The Board generally recognized the differing communities of interest of office workers, inside warehouse workers, outside workers and drivers or driver-dalesmen and granted units accordingly.

In the hotel trade the Board followed a rather clear pattern of unit consolidation. Previous practises of recognizing units associated with a particular portion of the employer's operation have given way to units based on the recognition that, under changed provincial laws, people performing similar functions, with similar skills, may be found in several locations within any particular hotel. The separate status of maintenance workers in larger institutions has been recognized by the Board, which pointed out that it is still willing to recognize "legitimate" communities of interest where they occur.

Evidence indicates that with respect to the automobile and equipment retail and parts industry the Board has decided that two units at most will be certified, and only one in most situations where a rather small number of workers is involved. The differing employment conditions of mechanics and office workers appear sufficient to warrant their separation, but the likelihood of further Board-sanctioned divisions seems rather remote.

Municipal Governments and School Boards

When faced with a determination involving municipal government operations the Board appeared to be very flexible. The simple inside-outside split was favoured, but where a more complex structure seemed necessary its implementation did not seem to cause any particular difficulties. This flexibility was also apparent in the grouping of non-teaching employees of school boards, where the Board has certified all-employee units as well as units specific to particular groups such as caretaking and maintenance personnel.

Exclusions based on managerial and/or confidential activity are again treated on a case by case basis, particularly in the municipal context where managerial ability to affect actual conditions of employment had to be closely examined in each situation. Much as in the construction and retail areas, the lofty title did not always correspond to the actual duties performed.

FINAL OBSERVATIONS

General statements with respect to the activity of the Alberta Board may be made from four partially distinct perspectives, each providing a slightly different insight into the actions of the Alberta Board, yet each being somewhat less than a "conclusive" summation.

The Alberta Board Compared

The actions of the Alberta Board have been generally compared to the actions of two other boards, Ontario and British Columbia, and some observations may be made from this continual comparison.

In the health care industry the three boards have officially recognized at least three distinct groupings, support personnel, nurses, and paramedical workers. In Alberta, however, a division has also been recognized in the nursing function and the paramedical unit, the former largely because of the activity of an organized bargaining agent and the latter because of a perceived split in the community of interest within the paramedical group. This "acceptable" structure in Alberta is admittedly different from that of the other two jurisdictions; whether it is indeed a major difference will depend upon the degree of actual acceptance of the framework by the parties involved. The common denominator between the three jurisdictions is their recognition that a clear-cut policy commitment was necessary in this sector.

All three jurisdictions did recognize the status of nurses, but they did differ in their treatment of office staff. In Alberta the group was part of the service workers, in British Columbia the unit was and was not granted separate status, and in Ontario the issue was handled on a case by case basis. In terms of geographical scope, Alberta appeared to be willing to certify on a single or multi-location basis, while in the other jurisdictions single location units were the general rule.

There is little to distinguish the activity of the Alberta Board from that of British Columbia and Ontario in the field of unit determination in the construction industry. All three Boards had to deal with the increasing ambiguities surrounding the actual industry status of some firms, and all three refused to tie themselves to any rigid policy in this regard. The status quo was certainly kept alive and well in all jurisdictions, but there was also evidence of moves toward unit consolidation when the opportunity was clearly presented.

In regard to employer associations and registrations, the comparability of the three Boards is critically hampered by legislative differences, (The British Columbia Board is not involved in a scheme even remotely comparable to those in operation in Ontario and Alberta.) the rather short period of time in question, and the absence of any major policy statements by the two boards active in registration. It is apparent that the Alberta and Ontario Boards are resolutely resisting any alterations in the registration unit that would defeat the purpose of the scheme, namely stability in a most unstable industry.

In the retail trade both Alberta and British Columbia appeared comfortable with the concept of multi-location, geographically comprehensive units, while Ontario, at least on the evidence of recent hearings, appeared to be having some problems in this area. Ontario also appeared to be not totally committed to any particular structure in the hotel industry, with some seemingly fragmentary units still being certified. In Alberta and British Columbia such units were not often encountered, suggesting a more firmly entrenched and developed concept of what units should be workable in this setting.

In the municipal setting the standard inside-outside split was recognized in all three jurisdictions, with other units particular to policemen and firemen. All three boards seemed to be unsure of where non-teaching school board personnel should be placed. Many different units could be found and no evidence appeared to suggest that any standardized approach had been formulated by any of the Boards.

A common element in all three jurisdictions was the situation-specific treatment of the managerial-confidential exclusion problem. All three boards have invariably stayed away from committing themselves to any blanket policy regarding certain positions in certain industries, instead choosing to make such decisions on the basis of the "facts" on hand.

There really appear to be no fundamental differences in the activities of the three boards referred to in this work. There are questions of "degree" in some instances, but there is no evidence to suggest that the Alberta Board of Industrial Relations has embarked upon a fundamentally different approach to bargaining unit determination in any particular industry, at least in relation to Ontario and British Columbia.

The Three Major Problems

Chapter two of this work discussed three major problems that did and no doubt will continue to confront labour relations boards, the craft unit question, the managerial exclusion question, and the status of professional personnel. All three groups have played a major role in the recent activity of the Alberta Board of Industrial Relations.

Craft units have not made any significant inroads in Alberta in the last ten years. In the health care sector the five unit concept effectively halted the potential growth of a large number of "professional" craft units, while in construction the poor reception given to proposals for some form of craft multiplication (e.g. drywall industry) coupled with the intent of registration to produce multi-craft bargaining in the long run indicates that the future for craft units in that industry is not overly promising. During the period 1966 to 1976 it would be fair to say that, at least in construction, the craft unit did little better than hold its own. In the retail industry and the public sector the situation was not much better. In the retail chain operations the meat workers managed to hold on to their separate status, but in the hotel industry the crafts related to food and drink preparation faired poorly, as did the traditional crafts in the equipment retailing and school situations, where traditional crafts were not usually recognized.

The health care environment provided the Alberta Board with the "opportunity" to wrestle with the problem of the status of "professionals" in collective bargaining structure. The Board was forced to commit itself to a policy that would in effect provide a guideline respecting what would or would not be considered a "profession" for bargaining purposes, and what the status of those who where more "professional" would be. The Board did produce a dividing line between "technician" and "professional", based largely on type and amount of education, but no special status was granted to the group deemed to be more "professional". In treating the group as a distinct but hardly extraordinary unit the Board really denied this group the status of a true "profession". The Board apparently decided that there was nothing in the relationship of these people with their employer or with those they administered to that would exempt them from collective bargaining, and nothing so terribly unique about any particular one of them that would prevent their being combined into one unit for bargaining purposes. If this industry can be taken as a valid example, it would seem to indicate that the Alberta Board is not predisposed to the recognition of any new, allegedly authentic "professionals".

Since the Alberta Board treated the managerial-confidential exclusion problem on a case by case basis, and since the reasons for decision in each case are now recorded, in most instances, only in the minds of those who were party to the decisions, it is extremely difficult to generalize with respect to the Board's position in this area, particularly concerning the managerial issue. In the major protions of this study the examples of managerial exclusion of a given position (e.g. department head in the health care industry) are usually balanced by as many instances of inclusion of the position in a unit. Only the head nurse in the health care field and the general foreman in the construction industry provided any fairly consistent pattern of exclusion on the grounds of managerial function. Any conclusions regarding Board policy would have to be based on the Board's rather consistent reluctance to grant such exemptions in the retail trade and the public sector. Here the Board seemed rather averse to granting any exclusion, doing so only where authority was exercised over other employees; I suggest that this stnace may be taken as indicative of overall Board policy in spite of the lack of conclusive evidence in other portions of this study.

In Relation to 1966

The recent activity of the Alberta Board may also be observed in light of the position of the Board in 1966, as delineated by Professor Herman. Although the organization of Mr. Herman's work differed markedly from that of this work there are still observations made in certain portions of that work that may be used for observation-comparison purposes here.

In 1966 it was, according to Herman, policy in Alberta to recognize only those established crafts with a clear tradition of collective bargaining in the province. There is nothing herein to suggest that this policy has been abandoned. New "groupings" (e.g. in health care) may have emerged, but no new craft in the sense of a distinct and separate occupational skill represented by a separate bargaining agent has emerged (although there are those who would argue that the auxiliary nursing care group, as represented by the Certified Nursing Aides, were very close to such a group at one point).

Mr. Herman also pointed out that the Alberta Board recognized construction craft unions through units specific to a given firm, bargaining agent and geographic area. Again, this writer has uncovered nothing that reveals any shift in this policy. The craft structure is still predominant in the industry, though perhaps not all-encompassing at the "fringe".

Board policy with respect to multi-location units has also remained quite constant. Herman stated that the Board was willing to certify multi-location units within certain geographic limits, usually a metropolitan area, and particularly in the retail industry. This policy continues unchanged, with only the extent to which those locations to be included are enumerated in the unit description varying in some instances.

A major change in Board activity, as observed by Mr. Herman, has occurred in the area of multi-employer certifications. This change was not a result of a change in Board policy, but rather a change in legislative policy. Under the registration scheme in the construction industry a form of "official" multi-employer "certification" was made operative, a situation that did not exist at the time of Herman's work. Certifications are still, technically speaking, granted on a single-employer basis, but since the bargaining and other related functions are not conducted through a Board-sanctioned multi-employer structure one might safely say that a form of multi-employer "certification" does now exist in Alberta.

The Basic Principle

In the introduction to this work it was pointed out that the "stability principle pervades all of the decisions made by labour relations boards." This general principle overshadowed virtually all of the analysis contained in this work, and it is to this principle that one must ultimately return. The certification scheme that was well entrenched before the time period covered by this study, and the registration concept that appeared during the time frame in question were both specifically designed to promote stability in the field of industrial relations, and as the administrator of both schemes, it was incumbent upon the Alberta Board of Industrial Relations to see, to the best of its ability, that this indeed occurred. Whether this has happened in Alberta is not for this wtiter to decide. What is worthy of note, however, is that there is nothing contained in this study that would allow anyone to build a convincing case against the Alberta Board with respect to its commitment to the stability principle. As would be the case with any administrative body operating in a rather amorphous area, there are isolated decisions and instances that might not fit into the pattern, but overall, when the "crunch" came, the bulk of the decisions were in favour of stability. This has been the major "trend and tendancy" set by the Alberta Board of Industrial Relations in the field of bargaining unit determination.

FURTHER STUDY

Any study that involves a rather large amount of data and a great deal of time invariably raises many more questions than it answers. The following are some of the questions raised during the preparation of this study:

What is the rationale behind and formation of bargaining units in health care institutions in Alberta not encompassed by the Alberta Labour Act?

What will be the ultimate success of the five-unit concept in health care? What has really happened in this area, as opposed to what is happening "formally"?

How well is the registration program in Alberta really working? How is it working compared to other jurisdictions? If it is not working the way it should, how could it be changed? What do the parties involved thing? What have been the major problems?

Have there been any difficulties in the conciliation process in Alberta because of bargaining structure? If so, what are they? How might they be solved?

The white-collar worker in Alberta. The rather odd status of the white-collar administrative staff in health care and the education system implies that the overall status of this group, not only from a bargaining unit perspective, in the Alberta industrial relations system may warrant a closer look.

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